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Extension of Comments on Bill No 4-193

EXTENSION OF COMMENTS ON

THE DISTRICT OF COLUMBIA THEFT

DC Theft and a White Collar Crime Act of 1982

Submitted

Councilmember
Chairperson, Committee

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EXTENDED COMMENTS ON BILL 4-133

TITLE I -- Theft and Fraud Offenses.

Title I of this bill covers theft, fraud and related offenses. The bill is divided into six subtitles: Subtitle 1 sets forth general provisions for Title I; Subtitle 2 relates to theft offenses; Subtitle 3 relates to fraud offenses; Subtitle 4 covers dealing in stolen property; Subtitle 5 defines the offense of forgery; and Subtitle 6 defines the offenses of extortion and blackmail.

SUBTITLE 1: General Provisions

Subtitle 1 sets forth general provisions for the Theft and Fraud Offenses title. Section 101 provides definitions for terms used in Title I. Section 102 permits the values of items stolen pursuant to a scheme or systematic course of conduct to be added together for the purpose of determining the grade and penalty for the offense. Section 103 deals with duplicative offenses -- when the same conduct violates two different provisions of the bill.

Section 101: General Definitions.

This section sets forth definitions for terms which are used in Title I of the bill. The definitions are intended to apply in each instance that the term appears in the title, unless a different meaning is plainly required.

Paragraph (1) of this section defines the term "appropriate". This term is used in the consolidated theft provision (section 111) and is discussed in the context of that section.

Paragraph (2) defines the term "deprive". The term is used in section 111 (Theft) and section 132 (Receiving Stolen Property). For the purposes of analysis, the definition set forth for the term will be explained in the context of those sections.

Paragraph (3) defines the term "property" which is used throughout Title I of the bill. The term is broadly defined as anything of value. As provided in D.C. Code, section 22-102, anything of value includes things having actual value as well as intrinsic value. The definition of the term "property" is intended to be broadly construed to insure that all forms of property are protected from unauthorized takings or uses. The definition is also intended to remove any common law distinctions between the types of property which could be the subject of a larceny. To make this intent clear, the definition provides that the term "property" includes, but is not limited to, real property, tangible and intangible personal property, and services.

At common law, real property could not be the subject of a larceny. The definition of property set forth in the bill eliminates this distinction by clearly including real property within the meaning of the term. For the purposes of this bill, real property includes things growing on, affixed to, or found on the land whether or not the item is severed from the land. This concept is expressed in the current larceny statute, D.C. Code, section 22-2201, by the language "including things savoring of realty".

The term "property" also includes tangible and intangible property. At common law, intangible property could not be the subject of a larceny. As used in this bill, however, the term "property" includes intangible property of all types. Examples of the different kinds of intangible

property covered by the term are money, rights, privileges, interests and claims as well as intellectual property such as trade secrets and other forms of confidential information which may be contained in documents.

The term property also includes services, which are defined in paragraph (5) of this section. At common law, services of another could not be the subject of a larceny. This distinction has been carried over in the District's formulation of the crime of larceny, although, under the current law, services may be the subject of a false pretense. (D.C. Code, sec. 22-1301).

Paragraph (4) of this section defines the term "property of another". This term is defined as property in which another has an interest which the offender may not infringe upon or interfere with without consent, whether or not the offender also has an interest in the property. In this context, "person" not only means individuals, but includes corporations, partnerships, associations and other entities.

The term "property of another" also includes property of a government. For the purposes of this definition, a government includes not only the District of Columbia government, but other domestic or foreign governments as well. Consequently, property belonging to the Commonwealth of Virginia or the State of Maryland is protected if taken within the jurisdiction of the District of Columbia. For the purposes of this definition, the term "government" is also intended to cover any branch, agency, department or other instrumentality of a government. It is specifically intended that

the property of a corporation or other legal entity formed pursuant to an interstate compact be covered. Thus, for example, property belonging to the Washington Metropolitan Area Transit Authority is intended to be protected.

The term "property of another" is not, however, intended to cover property that is in a person's possession and in which another person has only security interest. The term "security interest" is intended to have the same meaning that the term has under the Uniform Commercial Code. 1/

Paragraph (5) of this section provides examples of what is meant by the term "services". The list provided is not exclusive and other types of services are intended to be included. The term "property" as set forth in paragraph (3) includes services. Thus, there is no need to determine whether a particular thing of value constitutes property as opposed to a service.

Paragraph (6) of the definition section addresses the meaning of the term "stolen property". It does not set forth a specific definition of "stolen property" but merely notes that the term is intended to cover embezzled property as well as property obtained by other types of theft. At common law, embezzled property was not considered to be "stolen" for the purposes of the offense of receiving stolen property and, as a result, receiving embezzled property was delinated as a separate offense. 2/ This provision specifically applies to the offenses of Trafficking in

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1/ See, D.C. Code, sec. 28:1-207(37) (1981).

2/ See, D.C. Code, sec. 22-1204 (1981).

Stolen Property (Section 131) and Receiving Stolen Property (Section 132) and makes clear that these offenses cover property obtained by conduct "previously known as embezzlement". Since the offense of embezzlement is included within the general theft provision of this bill, embezzlement would no longer be a separate offense.

Section 102: Aggregation.

Section 102 of the bill provides for aggregation of the values of items stolen as part of a single scheme or course of conduct. Specifically, this section provides that if several items of property are stolen pursuant to the one scheme or a systematic course of conduct, the values of those items may be added together for the purpose of determining the grade of the offense and the appropriate penalty.

Aggregation is permitted regardless of whether the amounts were taken from one person or several, provided that the amounts were taken pursuant to one scheme or course of conduct.

The major advantage of this section is that it permits the cumulation of small amounts taken by an offender. Thus, if a person sets out to systematically pilfer small amounts, he or she may be charged with one felony rather than several misdemeanors. To illustrate, a cashier may pursue a scheme whereby he or she takes $10 per day from the cash register. Another example is a person who goes from house to house in a neighborhood promising to seal roofs at $80 a roof but instead absconds with the money. In either case, the person would be guilty of several misdemeanors under

current law, although over time the financial loss to the victims may be substantial. This section would permit the prosecutor to charge the person with a felony rather than a series of misdemeanors.

This section permits aggregation for the offenses of Theft (section 111), Fraud (section 122) and Credit Card Fraud (section 123). In the case of credit card fraud, only values obtained within any consecutive 7-day period may be added together.

Section 103: Duplicative Offenses.

This provision prohibits the imposition of consecutive sentences in cases in which the same act or course of conduct violates both: (1) the Theft (section 111) and Fraud provisions (section 131); or (2) the Theft (section 111) and Unauthorized Use of Vehicles (section 115) provisions; or (3) the Theft (section 111) and Commercial Piracy (section 114) provisions.

Nothing in this section is intended to prohibit the court from imposing concurrent sentences in such cases. Nor is anything in this section intended to prohibit the court from deciding to vacate a conviction on the grounds that two offenses are identical. 3/

Currently, D.C. Code, sec. 23-112 provides that sentences are to run consecutively unless the judge expressly provides otherwise. The statute specifically provides that sentences are to be consecutive whether or not the offense "arises out of the same transaction and requires proof of a fact which the other does not". This language has been interpreted to

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3/ See, Lewis v. United States, 389 A.2d 306 (D.C. 1978).

embody the rule of statutory construction stated in Blockburger v. United States, 289 U.S. 299 (1932), which held that multiple punishments cannot be imposed for two offenses arising out of the same criminal transaction "unless each offense requires proof of a fact which the other does not."[4/] Nothing in this section is intended to abrogate D.C. Code, section 23-112. However, for the offenses listed, it is intended that multiple punishments shall not be imposed if the violations arise from the same act or a single course of conduct.

In terms of conduct which constitutes a violation of both the Theft provision and the Unauthorized Use of Vehicles provision, section 103 works no change to the current law. In such a case, a person may be convicted of both offenses under the current law, but the sentences must run concurrently.[5/] Commercial Piracy is a new offense and thus there is no precedent in the current law as to whether consecutive sentences would be permissible. Likewise, the general fraud provision contained in section 121 is new to District of Columbia law.[6/]

4/ Whalen v. United States, 445 U.S. 684, 691 (1980)

5/ United States v. Johnson, 433 F.2d 1160 (D.C. Cir. 1970); Evans v. United States, 232 F.2d 379 (D.C. Cir. 1956).

6/ As to other types of offenses involving fraudulent conduct, see Fowler v. United States, 374 A.2d 856 (D.C. 1977) and Lewis v. United States, 389 A.2d at 306.

SUBTITLE 2 — THEFT AND RELATED OFFENSES.

Subchapter 2 sets forth definitions and penalties for theft offenses. The offenses contained in this subtitle include theft, shoplifting, commercial piracy, unauthorized use of vehicles and taking property without right.

Section 111: Theft.

A. In General.

Section 111 defines the offense of theft. As defined, the provision consolidates the numerous theft offenses currently contained in the criminal code. In its current state, the code contains more than 30 statutes covering theft offenses. The distinctions between the offenses are highly technical and have caused a great deal of confusion in the administration of justice. For example, under the present law a defendant charged with larceny may claim that the evidence shows that he is guilty of embezzlement. If the larceny charge is dismissed and the defendant is convicted of embezzlement, it may well be found on appeal that the evidence actually showed larceny and the conviction must be overturned.

These technical distinctions stem in large part from the commom law. However, they no longer serve any useful purpose. As noted by Justice Cardozo:

> "The distinction, now largely obsolete, did not ever correspond to any essential difference in the character of the act or in their effect upon the victim. The crimes are one today in the common speech of men as they are in moral quality."7/

The bill serves to eliminate these technical distinctions.

7/ Van Vechten v. American Eagle Fire Insurance Co., 239 N.Y. 305, 146 N.E. 432 (1925).

B. Present District of Columbia Law.

As noted, there are more than 30 statutes contained in Title 22 of the District of Columbia Code which prohibit various forms of theft and fraud. The following is a partial list of those statutes.

D.C. Code Section	Offense
22-1201	Embezzlement of Property of District of Columbia.
22-1202	Embezzlement by agent, attorney, clerk, servant or agent of a corporation.
22-1203	Embezzlement of note not delivered.
22-1204	Receiving embezzled property.
22-1205	Embezzlement by carriers and innkeepers.
22-1206	Embezzlement by warehouseman, factor, storage, forwarding or commission merchant.
22-1208	Conversion by commission merchant, consignee, person selling goods on commission, and auctioneers.
22-1209	Embezzlement by mortgagor of personal property in possession.
22-1210	Embezzlement by executors and other fiduciaries.
22-1211	Taking property without right. (Reenacted in section 116 of this bill)
22-1301	False pretenses.
22-1404	Decedent's estate--secreting or property, documents or assets.

D.C. Code Section	Offense
22-1405	Same-- Taking away or concealing writings.
22-1407	Fraud by use of slugs to operate coin-controlled mechanism.
22-1410	Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; "credit" defined. (not repealed)
22-1411	Fraudulent advertising. (not repealed)
22-2201	Grand larceny.
22-2202	Petit larceny; order of restitution.
22-2203	Larceny after trust.
22-2204	Unauthorized use of vehicles.
22-2204(a)	Theft from vehicles.
22-2205	Receiving stolen goods.
22-2206	Stealing property of District.
22-2207	Receiving property stolen from District.
22-3115	Offenses against property of electric lighting, heating, or power companies.
22-3116	Tapping gas pipes.
22-3117	Tapping or injuring water-pipes - tampering with water meters.

While the criminal code presently contains numerous statutes defining theft-related offenses, there are basically five major theft offenses under current District of Columbia law. These five major offenses are : larceny; larceny by trick; larceny after trust; embezzlement; and false pretenses.

Larceny

Larceny is currently codified in D.C. Code, sections 22-2201 (Grand larceny) and 22-2202 (Petit larceny). The only distinction between grand larceny and petty larceny lies in the value of the property taken. 8/ Other than this distinction, the elements of the two offenses are identical. The basic definition of larceny is a trespassory taking and carrying away of anything of value of another with intent to appropriate the property to a use inconsistent with the owner's or possessor's right to the property.

Larceny by Trick

Larceny by trick is not currently codified as a separate offense in the District of columbia criminal code. Rather, the offense is prosecuted under the larceny statutes, using the common law definition of this offense. The elements of larceny by trick under common law are very similar to those of larceny; a trespassory taking and carrying of property of another with intent to appropriate the property to a use inconsistent with the owner's or possessor's property rights. Larceny by trick, like larceny, is an offense against possession rather than ownership. In a case involving larceny by trick, the offender obtains the property by means of fraud or trickery. In such a case, the owner is deemed to return constructive possession of the property on the basis that the

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8/ Grand larceny is larceny of property having a value of $100 or more, while petit larceny is larceny of property having a value of less than $100.

fraud vitiates the owner's consent in relinquishing possession of the property to the offender. [9/] Consequently, the taking becomes trespassory and constitutes this form of larceny. Confidence games are often prosecuted as larceny by trick offense.

Laceny After Trust

Larceny after trust is currently codified in D.C. Code, section 22-2203. To sustain a conviction under this statute, the prosecutor must prove that the offender was entrusted with possession of property for the purpose of the use and benefit of the complainant and that he or she converted the property to his or her own use with specific intent to deprive the complainant of the property.

Embezzlement

There are currently eight statutes contained in the District of Columbia Code which penalize embezzlement. Generally, embezzlement is defined as the unauthorized conversion of the property of another for a purpose not in intended for by the owner. [10/] The graveman of the offense is that of a breach of trust and confidence in a relationship between two persons, one of whom has acquired property of the other by reason of such a position of trust or by a virtue of his other employment. Thus, this offense applies to persons involved in certain types of employment or fiduciary relationships.

9/ Skantze v. United States, 288 F.2d 416 (D.C. Cir. 1961), cert. denied, 366 U.S. 972 (1961).

10/ See, Van Vechten v. American Eagle Fire Ins. Co., 239 N.Y. at 303.

Under present District of Columbia law, the definition of the offense of embezzlement is basically uniform. The separate embezzlement statutes reflect only differences in the nature of the relationships of the parties involved. For example, D.C. Code, section 22-1202 and section 22-1210 define the crime of embezzlement in basically the same terms. The only substantive difference is that D.C. Code, section 22-1202 applies to agents, attorneys, clerks and servants whereas D.C. Code, section 22-1210 applies to executors and other fiduciaries.

While embezzlement and larceny after trust are very similar in nature, there are two basic distinctions between the offenses. The first distinction is based upon the relationship between the parties. To commit embezzlement, the offender must be one of the types of people specified by statute, i.e. a clerk, an attorney, or agent, and must obtain possession of the property by virtue of his or her position or employment. Larceny by trust, however, applies to "any person" who is entrusted with property regardless of his or her relationship with the complainant.

The second distinction between ther offenses relates to the nature of the entrustment. In embezzlement, the offender obtains possession of the property by virtue of his or her employment or position. In larceny by trust, the offender obtains possession of the property for the purpose of applying the property for the use and benefit of the complainant.

Embezzlement is distinguished from larceny in that larceny requires a trespass or wrongfully acquisition of the property, embezzlement involves no trespass. Instead, the embezzler obtains possession of the property by virtue of his or her employment, rather than by a wrongful taking.

False Pretenses

False pretenses is currently codified in D.C. Code, section 22-1301. False pretenses is basically defined as obtaining title of property of another by means of a false representation as to a past or present fact which the offender knows to be false and which causes the victim to part with title to the property. False pretenses requires proof of an intent to defraud.

False pretenses and larceny by trick are very similar in nature. The traditional distinction between the two offenses is that larceny by trick is an offense against possession, while false pretenses is an offense against ownership. In a false pretenses situation, the victim intends to part with title rather than just possession of the property. 11/

C. The Offense

The offense of theft is defined in section 111(b) of the bill this consolidated offense is defined as wrongfully obtaining or using property of another with intent to: (1) appropriate the property to one's own use or to the use of a third person; or (2) deprive the other person of a right to the property or a benefit of the property. The definition of theft obtained in the bill has been derived, in large part from section 1731 of the Federal Criminal Code Reform Act (S. 1630).

1. The Conduct

The prohibited conduct under the theft section of the bill is described by the language "wrongfully obtains or uses". This phrase, which is defined in subsection (a) of section 111, is intended to cover all

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11/ Locks v. United States, 388 A.2d 873 (D.C. 1978).

major forms of acquisitive behavior. The language is intended to include conduct previously known as larceny, larceny by trick, larceny after trust, embezzlement and false pretenses, as well as all other similar types of conduct currently prohibited by District of Columbia law. While there is no intention to measurably alter the scope of District of Columbia law, it is intended that this provision be construed to at least include conduct currently prohibited by theft-related statutes contained in the Distric of Columbia law.

The purpose of the broad definition of the term "wrongfully obtains or uses" is to embody within one operative phrase concepts now described by larceny, embezzlement, stealing and the like. Using this single phrase to describe all major types of acquisitive behavior is intended to shift the focus of the offense away from irrelevant factors, such as whether there was a trespassory taking as opposed to a conversion of the property after entrustment. Instead, this formulation focuses on the issue of whether the defendant wrongfully obtained or used the property, rather than on the issue of how the defendant obtained the property.

The specific definition for the phrase "wrongfully obtains or uses" is provided in subsection (a) of section 111. As defined in this subsection, the phrase means the following:

(1) to take or exercise control over property; or

(2) to make an unauthorized use, disposition, or transfer of an interest in or possession of property; or

(3) to obtain property by trick, false pretenses, false token, tampering or deception.

Within this definition, the first phrase, "taking or exercising control over property", is used to connote any form of gaining control over

property. The term "taking" is meant to include the typical larceny situation, while the term "exercising control" is intended to cover the typical embezzlement situation.

The second phrase used to describe "wrongfully obtains or uses" is that of "making an unauthorized use, disposition, or transfer of an interest in or possession of property". This language is meant to cover acts such misapplying, using, concealing or secreting property. This language would, for example, apply to situations which would now be charged as conversion, embezzlement, or larceny after trust.

The third phrase used to define "wrongfully obtains or uses" is the phrase "obtaining property by trick, false pretense, false token, tampering, or deception". This phrase is used to describe any type of fradulent conduct. The phrase would, for example, cover conduct prosecuted as false pretenses and larceny by trick. This language is also meant to cover situations in which slugs are used to obtain property from a vending machine and situations in which utility services are attained without payment by tampering with the meter.

The federal proposed theft provision uses the phrase "obtains or uses" to denote the prohibited conduct. While this language has been adopted in section 111 of this bill, the phrase has been modified to read "wrongfully obtains or uses". The term "wrongfully" has been added to insure that purely innocent transactions are excluded from the scope of the offense. For instance, one who accepts a gift exercises control over the property with intent to appropriate it to his or her own use. However, absent other circumstances, this conduct is clearly not intended to be treated as a theft. Thus, the term "wrongfully" is used to indicate a wrongful intent to obtain or use the property without the consent of the

owner or contrary to the owner's rights to the property. Adoption of term "wrongfully" follows the revised theft statute enacted in New York.[12/] In a recent New York case, it was held that the use of the word "wrongfully" in the theft statute was not unconstitutionally vague, but rather provided an accurate concept of what is forbidden.[13/]

The object of the wrongful obtaining or use is "property of another". The term "property" is broadly defined in section 101(3) of the bill to mean anything of value. The term includes property of all types as well as services.[14/] The term "property of another" is defined in section 101(4) of the bill. The term is defined to mean property in which a government or a person other than the offender has an interest which the offender is not privileged to interfere with or infringe upon without consent, whether or not the offender also has an interest in the property. The term does not, however, extend to property in which the other person has only a security interest. Thus, the ordinary credit transaction is not included in this definition.[15/]

2. The Intent

Section 111 defines theft as a specific intent crime. In order to be liable under this provision, the offender must have committed the prescribed conduct with the intent: (1) to deprive another of a right to the property or a benefit of the property; or (2) to appropriate the property to his or her own use or to the use of a third person. The term "deprive"

12/ N.Y. PENAL CODE, section 155.05 (McKinney 1965).

13/ People v. Esteres, 378 N.Y.S. 2d 920, 924; 85 Misc. 2d 217, 219 (1976).

14/ For further discussion, see pgs. 2-3.

15/ For further discussion, see pgs. 3-4.

is defined in section 101(2) of the bill to mean: (1) to withhold the property from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value; or (2) to dispose of the property, or use or deal with the property so as to make it unlikely that the owner will recover it. As under the current law, the intent to deprive does not require an element of permanence. 16/

The term "appropriate" is defined in section 101(1) of the bill. As defined, the term means to take or make use of without authority or right. This language conveys the concept of an intent to use the property in a manner which is inconsistent with the rights of the owner or person in lawful possession. The intent may be to use the property or to divert the use of the property to a third person.

3. Presumption

Subsection (c) of section 111 provides that certain proof of theft of services shall be prima facia evidence that a person committed theft. This provision is drawn from the current law of false pretenses contained in D.C. Code, section 22-1301(b). In accordance with subsection (c) of section 111 of the bill is prima facia evidence of theft if is proven that a person obtained services which he or she knew or had reason to believe were available only for compensation. It must be shown that the person departed from the place where the services were rendered knowing or having reason to believe that no payment had been made, in circumstances in which payment is ordinarily made either prior to departure from the place or immediately upon the rendering of the services.

16/ Fredericks v. United States, 306 A.2d 268 (D.C. 1973).

Section 112. Penalties for Theft.

Section 112 of Bill 4-133 establishes penalties for the offense of theft. Section 112 creates two degrees of theft: felony theft and misdemeanor theft. The distinction between the two degrees is based upon the value of the property stolen. This penalty structure basically follows that provided in current District of Columbia law. Most of the present theft statutes provide misdemeanor and felony penalties based upon the amounts stolen. In general, the dividing line between misdemesnor and felony penalties under the current theft laws is $100. If the stolen property has a value of $100 or more, the offense is a felony. If the value of the property is less than $100, the offense is a misdemeanor. While section 112 of the bill continues this basic penalty structure, the amount which distinquishes felony theft offenses from misdemeanor theft offenses has been increased from $100 to $250. Under this section, if the value of the property stolen is $250 or more, the offense is a felony. If the value of the property is less than $250, the offense is a misdemeanor.

The specific penalties provided in this section are generally in accord with the maximum penalties provided for theft offenses in the current law. The penalty for first degree theft is set forth as imprisonment for up to 10 years or a fine of up to $5,000, or both. The penalty for second degree theft under this section is imprisonment for up to 1 year, or a fine of up to $1,000, or both.

As previously noted, there are presently more than 30 separate statutes in the District of Columbia Code which penalize various forms of theft. Separate penalties are provided for each and the penalties vary. Examples of the types of penalties provided under the

current law are listed in the following chart.

Offense	Misdemeanor Penalty	Felony Penalty
Embezzlement by agent, attorney, clerk, servant or agent of a corporation. (D.C. Code, secs. 22-1202 & 22-1207)	Imprisonment: not more than 1 year. Fine: not more than $200.	Imprisonment: not more than 10 years. Fine: not more than $1,000.
Embezzlement of note not delivered. (D.C. Code, secs. 22-1203 & 22-1207)	Imprisonment: not more than 1 year. Fine: not more than $200.	Imprisonment: not more than 10 years. Fine: not more than $1,000.
Embezzlement by carriers and inn-keepers. (D.C. Code, secs. 22-1205 & 22-1207)	Imprisonment: not more than 1 year. Fine: not more than $200.	Imprisonment: not more than 10 years. Fine: note more than $100.
Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant. (D.C. Code, sec. 22-1206 & 22-1207)	Imprisonment: not more than 1 year. Fine: not more than $200.	Imprisonment: not more than 10 years. Fine: none.
False pretenses. (D.C. Code, sec. 22-1301(a))	Imprisonment: not more than 1 year. Fine: not more than $1,000.	Imprisonment: not more than 1 year nor more than 3 years. Fine: none.
Grand larceny and Petit larceny. (D.C. Code, secs. 22-2201; & 22-2202)	Imprisonment: not more than 1 year. Fine: not more than $200.	Imprisonment: not less than 1 year nor more than 10 years. Fine: none.
Larceny after trust. (D.C. Code, sec. 22-2203)	Imprisonment: not more than 1 year. Fine: not more than $500.	Imprisonment: not less than 1 year nor more than 10 years. Fine: not more than $1,000.

In general, the penalties set forth in section 112 are in line with the current penalties for theft offenses which carry both a misdemeanor penalty and a felony penalty. With the exception of the fine levels, the penalties established in section 112 do not generally increase or decrease the current penalties with respect to offenses which currently carry both misdemeanor and felony penalties. In most instances, however, the fines established in section 112 do represent an increase in the current fine levels. As shown by the above chart, the maximum fine for a felony theft offense under the current theft statutes is $1,000. In general, the maximum fines for misdemeanor theft offenses is less than $1,000 and, in certain instances, no fine is provided for under the current law. Section 112 of the bill would establish a fine as an authorized sentence in all theft cases. However, the maximum fine level, is increased to $5,000 for first degree theft and $1,000 for second degree theft.

While the penalties established by section 112 are generally in accord with the current penalties for theft offenses, there are certain instances in which the penalties set forth in section 112 will have the effect of increasing or decreasing the current penalties. There are a number of theft offenses in the current law for which the penalty is not divided between a felony and misdemeanor. Rather, the penalty set forth is applicable regardless of the value of the property stolen. Examples of these provisions are listed below.

Offense	Penalty
Conversion by a commission merchant, consignee, person selling goods on commission, and auctioneers. (D.C. Code, sec. 22-1208)	Imprisonment: up to 6 months. Fine: up to $1,000.

Offense	Penalty
Stealing property of District. (D.C. Code, sec. 22-2206)	Imprisonment: up to 5 years. Fine: up to $5,000.
Tapping gas pipes. (D.C. Code, sec. 22-3116)	Imprisonment: up to 6 months. Fine: up to $250.
Tapping or injuring water pipes; tampering with water meters. (D.C. Code, sec. 22-3117)	Imprisonment: up to 6 months. Fine: up to $250.
Fraud by use of slugs to operate coin-controlled mechanism. (D.C. Code, sec. 22-1407)	Imprisonment: up to 6 months. Fine: up to $500.

These provisions have been consoliated in the general theft provision contained in section 111 of the bill and will be penalized depending upon the value of the property in accordance with the provisions of section 112 of the bill.

Section 113: Shoplifting

Section 113 creates a separate statutory offense of shoplifting. This section is new to District of Columbia law. Presently, shoplifting is not recognized as a separate offense under District of Columbia law, but is instead prosecuted as attempted larceny or larceny. Because of the special problems involved in this type of theft, and the frequency with which it is committed, it was determined that shoplifting should be recognized as a separate offense rather than simply treated as a theft under section 111 of the bill or as attempted theft.

Section 113 lends clarity to the current law by setting forth with particularity the types of conduct which is prohibited and also the circumstances in which a merchant may detain a suspected shoplifter without incurring civil liability.

Subsection (a) of Section 113 defines the offense of shoplifting. The prohibited conduct is as follows:

(1) concealing or taking possession of property offered for sale; or

(2) removing or altering the price tag, serial number, or other identification mark that is imprinted on or attached to property offered for sale; or

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

This conduct must be done knowingly. In this context, the term "knowingly" is intended to mean not by mistake or inadvertence.

It is required under this section that the conduct be committed with the intent to appropriate the property without complete payment or to defraud the owner of the value of the property. It is not necessary that the offender's intent be to steal the property without rendering any payment whatsoever.

It would be an offense under this section if, for example, a person altered a price tag on a piece of merchandise to reflect a lower price, intending only to pay the lower price.

The offense of shoplifting relates to "personal property of another that is offered for sale". The phrase "property of another" is defined in section 101(4) of the bill. While the term "property" is broadly defined in the bill as anything of value, this offense only relates to personal property which is offered for sale.

Subsection (b) of section 113 sets forth the penalties for the offense of shoplifting. The offense is punishable by a fine of up to $300, or imprisonment for up to 90 days, or both. The penalty for this offense has been set within the limits prescribed by D.C. Code, section 16-705 in order to make the offense non-jury triable.

Subsection (c) of section 113 provides that it is not an offense to attempt to commit the offense of shoplifting. By definition, the offense of shoplifting as described in this section is actually a form of attempted theft. There is no requirement that the offender actually be successful in stealing the property. It is sufficient for a conviction under this section that the defendant committed one of the enumerated overt acts with the requiste intent.

If the theft is not completed, the offender may be prosecuted for either shoplifting under this section or for attempted theft under D.C. Code, section 22-103. The offender may not, however, be prosecuted for attempting shoplifting, under the current attempt statute, D.C. Code, section 22-103.

However, there is no requirement that the offender actually succeed in stealing the property in order to be held liable under this section, the fact that the theft was completed is not intended to bar prosecution under this section.

Subsection (d) of this section relates to the civil liability of a merchant who detains suspected shoplifters. This subsection provides that a person who offers tangible personal property for sale to the public, and who detains or causes the arrest of a person in a place where the property is offered for sale shall not be held liable for detention, false imprisonment, malicious prosecution, defamation or false arrest in any proceeding arising out of such detention or arrest if certain conditions met. This civil immunity provision extends to merchants as well as their employees and agents. The provision protects any merchant who "offers tangible personal property for sale to the public". It is intended to cover all retail merchants regardless of whether or not they are also engaged in a wholesale business.

This subsection provides protections against liability in any "proceeding arising out of" the arrest or detention. The provisions of this subsection do not apply if the civil action does not stem from the arrest or detention. Thus, for example, this provision would have no relevance in a civil action for defamation which was based on facts totally unrelated to the shoptlifting arrest or detention.

There are four conditions which must be met for this grant of civil immunity to apply. The first condition is that the person detaining or causing the arrest must have had probable cause to believe that the person detained or arrested had committed the offense of shoplifting in his or her presence. Such probable cause must exist at the time of the detention or arrest. The term "probable cause" is intended to have the same meaning as it does under D.C. Code, section 23-581, which provides for arrests without warrants by police officers. As such, it is not intended that merchants be required to demonstrate probable cause in the

Constitutional sense, but merely that he or she acted on a good faith and reasonable belief that probable cause existed for the arrest.[17] As under current law, probable cause is a mixed question of law and fact. When there is no dispute as to the facts which establish probable cause, the issue should not be submitted to a jury.[18]

The last three conditions which must be met in order for the immunity provisions to apply relate to the reasonableness of the length and manner of the detention. Specifically, the manner of the detention or arrest must be reasonable, law enforcement authorities must be notified within a reasonable time, and the person detained or arrested must be either released or surrendered to law enforcement authorities within a reasonable time.

17/ See, Lucas v. United States, 443 F. Supp. 539 (D.D.C. 1977), aff'd, 590 F. 2d 356 (D.C. Cir. 1979).

18/ See, May Dept. Stores Co., Inc. v. Devercelli, 314 A.2d 767 (D.C. 1973) (interpreting Virginia law).

Section 114: Commercial Piracy

Section 114 creates a new offense of commercial piracy. There is no counterpart to this offense under current District of Columbia law. This new offense prohibits the unauthorized reproduction or possession of a phonorecord or proprietary information with the intent to sell or derive commercial gain or advantage.

Subsection (a) sets forth definitions for terms used in this section. Paragraph (1) defines the term "owner". As used in this section, the term means the person who owns the original fixation of the property involved in the offense "or the exclusive license in the United States of the rights to reproduce and distribute to the public phonorecords or copies of the original fixation". The quoted language was added to this definition by amendment at the Council's legislative session on July 6, 1982. This language was added to address the practical difficulties involved in prosecuting commercial piracy when the owner is a foreign corporation or person. Paragragraph (1) of subsection (a) further provides that the term "owner" refers to the performer or performers in cases involving the reproduction of a live performance.

Paragraph (2) defines the term "proprietary information". The term basically refers to confidential information or information the primary value of which may diminish if its availability is not restricted. Examples of this type of information are customer lists, mailing lists, formulas, recipes, computer programs, designs, unfinished works of art, and processes, programs and inventions of any kind. The term, however, is not meant to be limited strictly to the types of information enumerated. Other types of information which might diminish in commercial value if their availability is not restricted are also intended to be covered.

Paragraph (3) defines the term "phonorecord." The definition is derived from a federal statute, 17 U.S.C. §26, which defines terms used in the copyright title of the federal code.

Subsection (b) of section 114 defines the offense of Commercial Piracy. The conduct prohibited by this section includes the acts of reproducing, copying, possessing, buying or otherwise obtaining phonorecords of a sound recording, live performance or copies of proprietary information. In order to commit this offense a person must know or have reason to believe that the phonorecord or copy was made without the consent of the owner. Thus, it is a defense under this section that the defendant honestly and reasonably believed that he or she made the copy with the owner's permission or possessed a copy which was legitimate.

To be held criminally liable for commercial piracy, the offender must act with the intent: (1) to sell the copy or phonorecord; or (2) to derive commercial gain or advantage from the copy or phonorecord; or (3) to allow another person to derive commercial gain or advantage from the copy or phonorecord.

This section is not intended to subject a person to criminal liability if his or her intent in making a copy is not for commercial purposes, but is strictly for his or her own personal use. Thus, for example, a person who tapes a single copy of a sound recording merely to use the tape for personal enjoyment, without any intent to sell or transfer the tape or use it for any commercial purpose, has not committed an offense under this section. However, when an unauthorized copy is made or possessed for sale or other transfer for commercial purpose or for private gain, such as compensation for personal time or cost of equipment, such

conduct is prohibited in this section. Similiar to 17 U.S.C. §104, which criminally penalizes copyright infringement, this section is intended to prohibit as well the sale or exchange of an unauthorized copy or phonorecord for something of value in hope of some pecuniary gain.[19/] It is irrelevant to criminal liability under this section whether the offender realized a profit or suffered a loss from the transaction.

The phrase "derive commercial gain or advantage" is intended to encompass any transaction where the person reproducing or possessing the unauthorized phonorecord or copy of proprietary information surrenders ownership and control over it for consideration or any related form of compensation. Consequently, even an individual who does not hold himself or herself out to the public as engaging in a commercial enterprise can be subjected to criminal liability pursuant to this section.

Subsection (b) also provides that a presumption of the intent to derive commercial gain or advantage arises if it is proven that the offender possessed five or more unauthorized phonorecords of either the same sound recording or recording of a live performance. If such a fact is established, the offender will be presumed to have acted with the requisite intent. This presumption applies to persons possessing unauthorized phonorecords, but does not extend to the prosecution of unauthorized copies of proprietary information.

Subsection (c) of this section provides that copying or other reproduction is not prohibited under this section if: (1) the copy or reproduction is

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19/ See, United States v. Wise, 550 F.2d 1180, 1195 (9th Cir. 1977), cert. denied, 434 U.S. 929, rehearing denied, 434 U.S. 977 (1977); United States v. Taxe, 380 F. Supp. 1010 (C.D. Cal. 1974), aff'd, 540 F.2d 961 (9th Cir. 1976). cert. denied, 429 U.S. 1040 (1976), rehearing denied, 429 U.S. 1124 (1976).

specifically permitted by the U.S. copyright laws (Title 17, United States Code); or (2) the copy or reproduction of a sound recording is made by a licensed radio or television station or cable broadcaster solely for the purpose of broadcast or archival use.

Subsection (d) sets forth the penalty for the newly created offense of commercial piracy as a fine of up to $10,000 or imprisonment for up to 1 year, or both.

Section 115: Unauthorized Use of Motor Vehicles

Section 115 of this bill defines the offense of unauthorized use of vehicles. This section is a reenactment of existing law. The offense is currently codified in D.C. Code, section 22-2204. Section 115 carries forward the current law without substantive change.[20/]

Section 115 is divided into four subsections. Subsection (a) sets forth the definition of the term "motor vehicle". The term is defined as any automobile, self-propelled mobile home, motorcycle, truck, truck trailer, truck tractor with semi or full trailer, or bus. This definition applies to both subsections (b) and (c).

Subsection (b) relates to the unauthorized use of a non-rental motor vehicle.[21/] There are four elements to this offense.[22/] First, the defendant must take a motor vehicle, or use, operate or remove a motor vehicle from any place, or he or she must cause it to be taken, used, operated or removed from any place. Second, the offender must operate the motor vehicle or drive it or cause it to be driven for his or her own profit, use or purpose. Third, the offender must do so without the consent of the owner. Fourth, at the time the offender takes, uses, operates or removes the vehicle or causes the same, he or she must know that such acts are being done without the consent of the owner.

20/ Certain stylistic changes have been made to conform this section to other sections in this bill. The format of the current statute has also been changed to conform to the format used in this bill. For example, the definitions have been moved into a separate subsection.

21/ This subsection is a reenactment of D.C. Code, section 22-2204 (a).

22/ See, D.C. BAR ASS'N JURY INSTRUCTIONS NO. 4.66 (3d ed. 1978).

Unauthorized use of a motor vehicle is a general intent crime. Consequently, it is not necessary that a person have the intent to steal the vehicle in order to be convicted under this section.[23] However, it is necessary that the offender know that he or she was not authorized to use the vehicle.[24] It must also be shown that the offender did not take the motor vehicle by mistake, inadvertence or accident.[25]

Subsection (c) relates to failure to return a rented vehicle. This subsection reenacts D.C. Code, section 22-2204 (b) which was originally added to D.C. Code, section 22-2204 by An Act of Congress approved on October 17, 1976.[26] The offense set forth in subsection (c) applies when a person violates a written rental agreement which specifies that the vehicle is to be returned at a particular place and time. The elements of the offense are as follows:[27]

1. The defendant rented, leased, or used a motor vehicle under a written agreement;

2. The written agreement provided for the return of the motor vehicle to a specific place at a particular date and time;

3. The written agreement contained a clear and conspicuous warning of the penalties for failure to return the vehicle, printed in a contrasting color to the agreement, set off in a box, signed by

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23/ United States v. Johnson, 433 F.2d 1160 (D.C. Cir. 1970).

24/ In re Davis, 264 A.2d 297 (D.C. 1970).

25/ Fleming v. United States, 310 A.2d 214 (D.C. 1973).

26/ An Act to amend the Act establishing a code of law for the District of Columbia to prohibit the unauthorized use of a motor vehicle obtained under a written rental or other agreement, approved October 17, 1976 (Pub. L. No. 94-526; 90 Stat. 2479).

27/ D.C. BAR ASS'N JURY INSTRUCTION NO. 4.665 (3d ed. 1978).

the person who obtained the vehicle, in a space specially provided, and including the language: "WARNING- failure to return this vehicle in accordance with the terms of the rental agreement may result in a criminal penalty of up to three years in jail";

4. There was clearly and conspicuously displayed on the dashboard of the vehicle the following warning: "NOTICE- failure to return this vehicle on time may result in serious criminal penalties";

5. Written demand for return of the vehicle was made on or after the time for its return specified in the agreement, by actual delivery to the offender or by mailing a post-paid registered or certified letter, return receipt requested, to the offender at the address which he or she provided;

6. The written demand clearly stated that failure to return the vehicle might result in prosecution for violation of the criminal law of the District of Columbia punishable by up to three years in jail;

7. The offender failed to return the vehicle to the place specified in the agreement or to an authorized agent of the complainant within 18 days after the written demand was made; and

8. The offender did so knowingly.

Subsection (c)(3) provides that this offense does not apply to motor vehicles obtained under a rental installment contract. Subsection (c)(4) provides a defense to prosecutions brought under subsection (c). In accordance with this paragraph, it is a defense that the offender failed to return the motor vehicle because of causes beyond his or her control. However, the paragraph further provides that the offender carries the burden of raising and going forward with evidence of the defense. If this defense is raised,

the government is permitted to introduce evidence that the offender obtained the vehicle by reason of a false statement or representation of a material fact, such as by use of a false name, address, employment or operator's license. This evidence may be introduced on the issue of whether the offender's failure to return the vehicle was due to causes beyond his control. Naturally, the government retains the ultimate burden of proof.[28/]

Subsection (d) sets forth the penalties for this offense. The penalty for those who violate subsection (b) (unauthorized use of a non-rental vehicle) is a fine of up to $1,000 or imprisonment for up to 5 years, or both. The penalty for a violation of subsection (c) is a fine of up to $1,000 or imprisonment for not more than 3 years, or both. Subsection (d) reenacts the current penalties for this offense.

28/ S. REP. NO. 94-1344, 94th Cong., 2d Sess. 11 (1976).

Section 116: Taking Property Without Right.

Section 116 of this bill reenacts the offense of taking propery without right. This offense is currently codified in D.C. Code, section 22-1211. Section 116 is intended to carry forward the current definition of the offense. The elements of taking property without right are as follows:[29/]

1. The offender took property from the possession of another.

2. The offender did so against the will of the other.

3. After having taken the property, the offender carried it away.

4. The offender took the property and carried it away without right to do so and with intent to do these acts.

5. The property was of some value.

Taking property without right is a general intent crime.[30/] Thus, it is not necessary to have the intent to steal the property in order to be convicted under this section. It is necessary, however, that the taking be against the will of the owner. Thus, if the offender takes possession of the property with the knowledge and consent of the owner or someone authorized to consent on the owner's behalf, then no crime is committed.

29/ See, D.C. BAR ASS'N JURY INSTRUCTION NO. 4.68 (3d ed. 1978).

30/ Richardson v. United States, 403 F.2d 574 (D.C. Cir. 1968); Fogle v. United States, 336 A.2d 833 (D.C. 1975).

Under current law, the offense of taking property without right has been treated as a lesser included offense of larceny and unauthorized use of a vehicle.[31/] Conduct which constitutes the offense previously known as larceny has been included in the consolidated theft provision of this bill (section 111). Consequently, it is intended that the offense of taking property without right continue to be treated as a lesser included offense of the consolidated theft offense. Likewise, it is intended that the offense of taking property without right continue to be treated as a lesser included offense of unauthorized use of a motor vehicle, as defined in section 115 of this bill.

The current penalty for taking property without right is a fine of up to $100 or imprisonment for up to 6 months, or both. Upon the recommendation of the United States Attorney's Office for the District of Columbia and Division V of the District of Columbia Bar, the penalty for this offense was set at a fine of up to $300 or imprisonment for up to 90 days, or both. The purpose of the amendment is to make the offense non-jury triable.

Under District of Columbia law, a case is jury triable if the offender (1) is entitled to a jury trial in accordance with the Constitution of the United States or (2) is charged with an offense involving punishment of more than a $300 fine or imprisonment for more than 90 days and the offender demands a jury trial.[32/]

31/ Fogle v. United States, 336 A.2d at 833; Humphrey v. United States, 236 A.2d 438 (D.C. 1967).

32/ D.C. Code, sec. 16-705 (1981).

Article III of the Constitution provides that the trial of all "Crimes" shall be by jury.[33] However, it has long been established that the constitutional right to trial by jury does not extend to "petty offenses".[34] In determining whether an offense is a petty offense, the courts have sought objective criteria by which to gauge the seriousness of the offense. In this regard, the courts have generally used two types of criteria - - (1) the nature of the offense in relation to existing laws and practices in the nation, and in particular the relation to common law crimes;[35] and (2) the severity of the penalty.[36] As to the first criteria, it has been established that if the offense is of a nature that was not indictable at common law, it is not required to be jury triable under the constitution.[37] Similarly, if the offense does not carry a penalty so severe that it gives the offense the character of a common law crime or of a major offense, it is not required to be tried by a jury.[38] In this regard, the Supreme Court has

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33/ U.S. CONST. art. III, §2, cl. 3.

34/ Callan v. Wilson, 127 U.S. 540 (1888); District of Columbia v. Colts, 282 U.S. 63 (1930); Baldwin v. New York, 399 U.S. 66 (1970).

35/ District of Columbia v. Colts, 282 U.S. at 63.

36/ District of Columbia v. Clawans, 300 U.S. 617 (1937).

37/ See, Gaithor v. United States, 251 A.2d 644, 645 (D.C. 1969); District of Columbia v. Colts, 282 U.S. at 63.

38/ Austin v. United States, 299 A.2d 545 (D.C. 1973); Marshall v. United States, 302 A.2d. 746 (D.C. 1973).

held that an offense which carries a penalty of more than 6 months imprisonment could not be a petty offense for the purposes of the Constitutional right to jury trial.[39]

When viewed in light of these criteria, it is apparent that the offense of taking property without right does not rise to the level of a serious crime in terms of requiring a Constitutional right to jury trial. First, the offense was not indictable at common law. It does not constitute a common law larceny because the essential element of felonious intent is not required.[40] At most, this form of wrongful taking would have amounted to a trespass under common law.[41] However, at common law, a mere act of trespass unaccompanied by any circumstances constituting a breach of the peace was not indictable.[42] Because the offense was not indictable at common law and does not involve acts of "such obvious deprivity"[43] that it shocks the general moral sense and thus assumes the character of an indictable common law offense, a jury trial is not required under the Constitution. Nor is the penalty provided in the bill so severe as to require a constitutional right to a jury trial.

39/ Baldwin v. New York, 399 U.S. 66 (1970); Codispoti v. Pennsylvania, 418 U.S. 506 (1974).

40/ Bishop on Statutory Crimes (3d ed. 1901); Warton's Criminal Law, Vol. II, pg. 1125 (12th ed. 1932).

41/ Warton's Criminal Law, id.

42/ R. v. Storr (1765); 3 Burr. (1698); Russell on Crime, Vol. I, pg. 14 (12th ed. 1964)

43/ District of Columbia v.Colts, 282 U.S. at 73.

By reducing the penalty from six months imprisonment to ninety days, as proposed in section 116, there will also be no statutory right to a jury trial.[44/] As with other offenses which are penalized by a fine of up to $300 and imprisonment for up to 90 days, it is intended that this offense will not require a jury trial upon demand.[45/] The amended penalty, as provided in section 116, raises the current fine from $100 to $300. The increase in the maximum fine level reflects the change in economic values which has occurred since the statute was enacted in 1901. The fine has not been increased to over $300 in order to stay within the $300 limit set forth in D.C. Code, section 16-705(b) for determining whether the offense is jury trial demandable.

44/ See, D.C. Code, sec. 16-705(b) (1981).

45/ See, Marshall v. United States, 302 A.2d at 746; Austin v. United States, 299 A.2d at 545; Galison v. District of Columbia, 402 A.2d 1263 (D.C. 1979).

SUBTITLE 3. Fraud and Related Offenses

Subtitle 3 contains four sections. Section 121 defines two degrees of fraud. This section is new to District of Columbia law. Section 122 sets forth the penalties for fraud. Section 123 creates the new offense of Credit Card Fraud and section 124 defines the offense of Fradulent Registration.

Section 121: Fraud

A. In General and Present District of Columbia Law.

Section 121 defines the offense of fraud. The current criminal code does not contain a general fraud provision and consequently, consumer fraud and other types of fraud are prosecuted under a variety of theft-related offenses, such as the offenses of false pretense, larceny after trust and larceny by trick. This section, for the first time, treats fraud as a separate offense from theft.

The provisions of this section are primarily intended to combat consumer fraud, although the provisions cover other types of fraud as well. The gravamen of the offense of fraud which distinguishes it from theft, is that fraud involves a scheme or systematic course of conduct to defraud or obtain property of another.

B. The Offense.

Section 121 contains two subsections which describe two distinct offenses -- fraud in the first degree and fraud in the second degree. The distinction between first and second degree fraud is that in first degree fraud a person must actually obtain some property or cause another to lose property by means of the scheme, whereas in second degree fraud there is no requirement that the scheme be successful.

1. Subsection (a): Fraud in the first degree.

Fraud in the first degree is defined in subsection (a) of section 121. This subsection makes it a criminal offense to engage in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtain property of another or cause another to lose property.

The prohibited conduct in this section is engaging in a scheme or systematic course of conduct. A "scheme" is basically any pattern of behavior calculated to deceive persons of ordinary prudence and comprehension.[46/] The following types of schemes have been prosecuted under the federal mail fraud statute,[47/] which served in part as a model for this section: advanced fee rackets; schemes involving breach of fiduciary duties; chain referral schemes; charitable frauds; correspondence school schemes; credit card schemes; debt consolidation schemes; franchise schemes; schemes to defraud insurance companies; schemes to defraud investors; land sale schemes; loan application schemes; merchandising schemes; marital schemes; planned bankruptcy schemes; and work-at-home schemes. It is irrelevant to a prosecution under this section whether the scheme was intended to deceive one person or several.

The language "systematic course of conduct" has been derived from the New York fraud statute.[48/] The language is intended to express the concept

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46/ See, People v. Block & Kleaver, Inc., 427 N.Y.S.2d 133, 102 Misc. 2d 758 (1980).

47/ 18 U.S.C. §1341 (1970).

48/ N.Y. Penal Law §190.65 and 190.60 (McKinney Supp. 1980).

of a pattern of activity rather that an isolated act. However, there is no requirement that the pattern of activity exist over an extended period of time.

To be convicted under this section, the offender must act with the "intent to defraud or to obtain property of another by means of a false pretense, representation or promise". The language "intent to defraud" expresses the concept of an intent to deceive or cheat someone. It is not required that the offender have an intent to defraud any particular person, but rather that he or she had the intent to defraud some person.

The language "obtain property of another by means of false or fraudulent pretense, representation or promise" is basically derived from the federal mail fraud statute.[49/] The phrase "property of another", while not used in the federal statute, is consistent with the terminology used in Bill 4-133. The phrase is defined in section 101(4) of the bill. The term "property" is defined in section 101(3) of the bill to mean anything of value.

Fraud in the first degree requires a showing that the offender obtained property of another or caused another to lose property by means of the scheme. This element is not a part of the offense of fraud in the second degree. It is not required that the offender actually profit from the scheme. Is it sufficient if someone parts with anything of value because of the scheme.

2. Subsection (b): Fraud in the second degree.

Subsection (b) of section 121 defines the separate and distinct offense of fraud in the second degree. This subsection makes it an offense to engage in a scheme or systematic course of conduct with the intent to defraud or to obtain property of another by means of a false or

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49/ Supra.

fraudulent pretense, representation, or promise. The elements of this offense are identical to those of fraud in the first degree, except that in fraud in the second degree, there is no requirement that the offender succeed in obtaining property of another or in causing another to lose property. Fraud in the second degree is intended to be a lesser included offense of fraud in the first degree.

Subsection (c)

Subsection (c) provides that fraud may be committed by making a false statement as to a future performance which the offender does not intent to perform or knows will not be performed. While intent or knowledge may be inferred from the circumstances surrounding the transaction, such intent or knowledge of the falsity may not be established solely from the fact that the promise was not performed. The language in subsection (c) is not intended to change the current law in this regard.

Section 122: Penalties for Fraud.

Section 122 sets forth the penalties for fraud. For fraud in the first degree, where property is actually obtained or lost, the penalty is imprisonment for not more than 10 years and/or a fine of not more than $5,000 or 3 times the value of the property, whichever is greater, if the value of the property so obtained or lost is $250 or more. If the property is of some value less than $250, the penalty is imprisonment for up to 1 year and/or a fine of not more that $1,000. These penalties are consistent with the penalties established for theft, except that the potential maximum fine level is greater for fraud involving property valued at $250 or more.

For fraud in the second degree, which does not require that property actually be obtained or lost, the penalty is imprisonment for not

more than 3 years and/or a fine of up to $3,000 or 3 times the value of the property which was sought to be obtained, whichever is greater, if the value of such property which was the object of the scheme was $250 or more. If the value of the property sought was less than $250, the penalty is imprisonment for up to 1 year and/or a fine of not more than $1,000.

Section 123: Credit Card Fraud.

A. In General and Present District of Columbia Law.

Section 123 defines the offense of Credit Card Fraud. There is no counterpart to this section in present District of Columbia law. Currently, unauthorized use of acredit card can be prosecuted as false pretenses provided that all the elements of the offense of false pretenses is proven.[50/] A person may be convicted of forgery for signing credit card slips without authority.[51/]

B. The Offense.

Subsection (a) of section 123 defines the term "credit card" as any credit plate or other instrument or device issued to a person for his or her use in obtaining services or property. For the purposes of this section the term also includes debit cards.

Subsection (b) prohibits obtaining property of another by four types of conduct:

(1) using another's credit card without the consent of the other;

(2) using a revoked or cancelled credit card;

(3) using a falsified, mutilated or altered credit card; or

(4) representing oneself to be the holder of a credit card that in fact has not been issued.

50/ Hymes v. United States, 260 A.2d 679 (D.C. 1970).

51/ United States v. Gilbert, 433 F.2d 1172 (D.C. Cir. 1970). Hall v. United States, 383 A.2d 1086 (D.C. 1978).

The conduct must be done knowingly, and not by mistake or inadvertance. In addition, the offense must be committed with the intent to defraud.

Subsection (c) provides that a credit card is deemed to be cancelled when notice in writing of the cancellation or revocation has been received by the named card holder.

Subsection (d) sets forth the penalties for this offense. If the value of the property obtained is $250 or more, the penalty is a fine of up to $5,000 or imprisonment for up to 10 years, or both. If the value of the property is less than $250, the offense is punishable by a fine of up to $1,000 or imprisonment for up to 1 year, or both.

Section 124: Fradulent Registration

Section 124 defines the offense of Fradulent Registration. This offense, is currently codified in D.C. Code, section 22-1301(c), is part of the false pretenses statute. Section 124(a) is intended to carry forward the current definition of the offense without change. The elements of the offense are as follows:

1. The offender registered at a hotel, motel or other establishment which provides lodging to transient guests;

2. The offender registered under any name or address other than his or her actual name or address;

3. The defendant did so with specific intent to defraud the proprietor or manager of such establishment;

Although there are no appellate court decisions interpreting this provision, it is apparent that the crime of fraudulent registration is a specific intent crime. It is not an offense merely to register under a

false name; the false registration must be accompanied by an intent to defraud. Intent to defraud has been defined as an intent to deceive or to cheat.[52] Although the prosecution is not usually required to show an intent to defraud a particular person,[53] section 124 requires that the offender intend to defraud the "proprietor or manager" of the establishment. Thus, an intent to defraud some other person, not acting on behalf of the hotel, motel or other such establishment, will not suffice.

The current penalty for this offense is a fine of up to $500 or imprisonment for up to six months, or both. As set forth in this section, however, the penalty has been amended to be a fine of up to $300 or imprisonment for up to 90 days or both. The purpose of the amended penalty is to make the offense non-jury triable, in the interest of judicial and fiscal economy. In accordance with D.C. Code, section 16-705(b), a jury trial must be provided if required by the Constitution or if the penalty for an offense is m

SUBTITLE 4: DEALING IN STOLEN PROPERTY

This subtitle of the bill contains two sections. Section 131 creates a new offense of trafficking in stolen property. This offense is designed to penalize 'professional fences', persons engaged in the business of dealing in stolen property. Section 132 defines the offense of receiving stolen property.

Section 131: Trafficking in Stolen Property.

A. In General and Present District of Columbia Law.

Section 131 creates a new offense of trafficking in stolen property. There is no direct counterpart in existing District of Columbia law. Under present law, anyone who buys or receives stolen property may be prosecuted under D.C. Code, section 22-2205. The current law draws no distinction between an individual who is in the business of dealing in stolen property and an individual who buys or receives stolen goods for his or her own use. Section 131 serves to draw such a distinction and authorizes the imposition of more severe felony penalties on "traffickers". Individuals who are not in the business of dealing in stolen property are covered by section 132, which replaces the current receiving stolen goods statute.

B. The Offense.

Section 131 provides that a person commits the offense of trafficking in stolen property if, on 2 or more separate occasions, he or she traffics in stolen property knowing or having reason to believe that the property has been stolen.

The prohibited conduct under this section is trafficking. The term "traffics" is defined in subsection (a) of this section to mean:

(1) selling, pledging, transfering, distributing, dispensing, or otherwise disposing of property to another person as consideration for anything of value; or

(2) buying, receiving, possessing or obtaining control of property with the intent to do any of the foregoing acts.

As to the first part of the definition of "traffics", the phrase "as consideration for anything of value" is not intended to limit the offense to monetary transactions. The term "anything of value" is defined in D.C. Code, section 22-102 to include not only things possessing intrinsic value, but other things which represent value. The term as used in this section is intended to be broadly construed. Thus, the section is not only intended to cover transactions involving pecuniary payments but also exchanges. In determining liability under this section, it is irrelevant whether a profit is realized.

The second part of the definition of "traffics" covers the acts of buying, receiving, possessing or obtaining control of the property. The phrase "obtaining control" is intended to be broadly construed to include both actual and constructive control over the property. The acts of buying, receiving, possessing or obtaining control over the property must be done with the intent to either sell, pledge, transfer, distribute, dispense or otherwise dispose of the property as consideration for anything of value. Thus, this section covers dealings in stolen property where the offender acquires the property not for personal use but to dispose of it to another person for valuable consideration.

In order to be convicted under this section, the offender must know or have reason to believe that the property has been stolen. As under the current law, it is intended that the offender's knowledge or belief may be inferred from the circumstances of the offense[55/] and it is not required that the offender know for a fact that the property is stolen. Rather, it is sufficient if the offender had "reason to believe" that the property is stolen.

Most importantly, it is not required under this section that the property in fact be stolen. It is sufficient if the offender believes he or she is dealing with stolen property and commits the prohibited acts with the requisite intent.

Finally, to be convicted under this section, it must be shown that the offender trafficked in stolen property with the requisite intent "on 2 or more separate occasions". The phrase "on 2 or more separate occasions" is intended to mean 2 or more transactions committed at different times and involving different items of property. This requirement further distinguishes the professional fence from those not engaged in the business of dealing in stolen property. The person who on one occasion sells stolen property may be prosecuted under section 132 of the bill for receiving stolen property.

Subsection (c) of section 131 provides that it shall not be a defense to a prosecution under this section that the property was not in fact stolen if the offender engages in conduct which would constitute

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55/ See, Payne v. United States, 171 A.2d 509 (D.C. 1961).

the crime if the attendant circumstances were as the offender believed them to be. This subsection eliminates the defense of legal or factual impossibility as applied to the substantive offense of trafficking in stolen property. Elimination of the defense of impossibility from the trafficking offense was strongly recommended by the United States Attorney's Office for the District of Columbia. This recommendation was based upon the frequent use of property in the custody of the police and property legitimately purchased by the police in large-scale undercover operations aimed at professional fences. Several other states have also eliminated the defense of impossibility as it applies to the substantive offense of dealing in stolen property.[56/]

Subsection (d) of section 131 sets forth the penalty for this offense. Trafficking in stolen property is punishable by a fine of up to $10,000 or imprisonment for up to 10 years, or both. This penalty applies regardless of the value of the property involved in the commission of the offense.

Section 132: Receiving Stolen Property

A. In General and Present District of Columbia Law.

Section 132 defines the offense of receiving stolen property and basically carries forward the current law in this area. Presently, there are four criminallaw statutes which relate to stolen property.

The most significant of these statutes is D.C. Code, section 22-2205--'receiving stolen goods'. There are several elements to the offense described in this statute. First, the property[57/] in question must have been stolen by someone. If the goods have not in fact been stolen, no offense is committed even though the offender

56/ See, for example, FLA. STAT. §812.019 (Supp. 1978). See also, Padgett v. State, 378 S.2d 118 (Fla. 1980).

57/ Brown v. United States, 304 A.2d 21 (D.C. 1973); Tucker v. United States, 421 A.2d 32 (D.C. 1980).

has been told and believes that the property has been stolen.[58]

The second element which must be proven is that the offender received or bought the stolen goods. However, under the current statute, proof of a transfer of the property is not required and the offender's mere possession of stolen property may support an inference of receipt.[59]

The third element which must be proven under current law is that at the time the offender received or bought the goods he or she knew or had cause to believe that the goods were stolen.[60] It is within the jury's discretion to infer guilty knowledge if it is found that the offender had possession, without authority, of recently stolen goods and neither the circumstances of the case nor the evidence presented by the offender reasonably explains the offender's possession.[61] However, "possession, unless unexplained, creates only an inference of guilt which the jury may choose to find by reason of it, and not a presumption which ends the matter so far as the jury is concerned." [62]

58/ See, United States v. Hair, 356 F. Supp. 339 (D.D.C. 1973).

59/ Madre v. United States, 173 A.2d 917 (D.C. 1961); Blue v. United States, 270 A.2d 508 (D.C. 1970).

60/ Baer v. United States, 293 F. 843 (D.C. Cir. 1924), Brown v. United States, 304 A.2d at 21.

61/ Barnes v. United States, 412 U.S. 837 (1973); Williams v. United States, 281 A.2d 293 (1971); Charles v. United States, 371 A.2d 404 (D.C. 1977).

62/ Robertson v. United States, 364 F.2d 702, 703 (D.C. Cir. 1966). See also, Fleming v. United States, 310 A.2d 214 (D.C. 1973).

The fourth element which must be proven under current law is that the offender received or bought the goods with specific intent to defraud. Fraudulent intent to deprive the owner of his or her possession may be inferred if the prosecution shows that the offender was in possession of recently stolen property.[63/]

The final element that must be proven under current law is that the goods involved were of some value.

Another statute in the current criminal code which relates to receipt of stolen property is D.C. Code, section 22-1204. This statute makes it a crime to buy or in any way receive anything of value knowing that it was embezzled. At common law, embezzled property was not considered to be "stolen" for the purposes of the offense of receiving stolen property. In order to remedy this technical distinction of the common law, receipt of embezzled property was delineated as a separate offense in the District of Columbia Code.

D.C. Code, section 22-2207 prohibits receiving, concealing or aiding in concealing any property, money or writing of the District of Columbia knowing the same to have been embezzled or stolen from the District of Columbia. For prosecution under this statute, the offender must act with the intent to convert the property to his or her own use.

Finally, D.C. Code, section 22-108, relates to offenses committed beyond the District of Columbia, is relevant to this area of the law because it applies to situations in which stolen goods are brought into the District from elsewhere. This statute, which provides that upon conviction the offender shall be punished in the same manner as if the act had been committed wholly within the District, is not amended or repealed by Bill 4-133.

63/ Williams v. United States, 281 A.2d at 294.

B. The Offense.

Section 132 is basically intended to carry forward the current law with respect to the offense of receiving stolen property. The prohibited conduct under this section includes the acts of buying, receiving, possessing or obtaining control over stolen property. The terms "buys, receives, possesses, or obtains control" are intended to cover an entire range of conduct from the initial acquisition of the property through continued use or disposition of the property. The Brown Commission recommended that this language be adopted in the federal criminal code proposal. As the Commission explained in its formulation of the offense:[64/]

> The reason for using multiple terms in this context instead of simply using the term "receiving" is that the requisite knowledge that the property has been stolen can be acquired at any time during the course of one's dominion or control over property. The judgment is that one who acquires property innocently is as culpable if he later learns that it is stolen and in the face of that knowledge continues his control over it or disposes of it, as he would have been if he initially received it with such knowledge.

The terms "buy" and "receive" are used in the current receiving stolen property statute, D.C. Code, section 22-2205. As used in this section, the terms are intended to have the same meaning as they have under the current law. The term "possession" is not used in the current statute, but the addition of this term to describe the prohibited conduct is not intended to alter the current law in any measurable fashion. Under current law, the fact that the offender possessed stolen property may be used to support an inference of receipt.[65/]

64/ National Commission, Working Papers, p. 933.

65/ Madre v. United States, 173 A.2d at 917.

As under current law, it would not be required under this section that the offender be in exclusive possession of the property.[66] However, for an inference of guilty to arise "the accused must bear a distinctive relationship to the property".[67] "Possession" under this section does not require direct physical control or dominion over the property.[68] The phrase "obtain control" also is intended to be broadly construed to include both actual and constructive control.

Under section 132, the prosecution is required to show that the offender knew or had reason to believe that the property was stolen. This requirement is contained in the present law. The phrase "having reason to believe" is intended to have the same meaning as that given to the phrase "having cause to believe" under the current law. It is not required that that offender have actual knowledge.

Unlike the trafficking in stolen property provision of section 131, this section retains the requirement of current law that the property be in fact stolen. As used in this context, the term "stolen property" is intended to cover property obtained by theft as well as that obtained by robbery, burglary and other offenses involving various forms of theft. This is consistent with the current law. Section 101(6) of the bill specifically provides that the term "stolen property" also includes property obtained by the "offense previously known as embezzlement."

66/ Scott v. United States, 228 A.2d 637 (D.C. 1967).

67/ United States v. Johnson, 433 F.2d 1160, 1164 (D.C. Cir. 1970).

68/ Id. at 1165

Under Bill 4-133, embezzlement is no longer treated as a separate offense, but is merged into the consolidated offense of theft. Consequently, there is no longer any need, as there was under current law, to treat receiving embezzled property as a separate offense.

The intent requirement for this offense is an "intent to deprive another of the right to the property or a benefit of the property." The term "deprive" is defined in section 101(2) of the bill. The term defined to mean: (1) withholding property or causing it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value; or (2) disposing of the property, or using or dealing with the property so as to make it unlikely that the owner will recover it.

C. Attempts.

Subsection (b) of section 132 provides that the fact that the property was not stolen shall not be a defense to a prosecution for an attempt to commit the offense of receiving stolen property if the offender engages in conduct which would constitute the crime if the attendant circumstances were as the offender believed them to be. This provision is intended to eliminate the defense of impossibility as it applies to attempts to commit the offense of receiving stolen property. Unlike a similar provision contained in the trafficking section, section 131(b), this provision does not eliminate the application of the defense of impossibility to the substantive offense. As previously noted, to be convicted of the completed offense of receiving stolen property, the property must have in fact been stolen.

There are basically two lines of authority on the issue of whether property which has lost its stolen character at the time it was purchased by the offender will support a charge of attempted receipt of stolen property.

Some state courts have held that an offender may commit the crime of attempt to receive stolen property even though the property is not stolen.[69] Other jurisdictions follow a rule of law that no crime is committed when the property is not stolen.[70] The District of Columbia falls into the latter category. In the case of United States v. Hair, 356 F. Supp. 39 (D.D.C. 1973), it was held that because the property received by the defendant was not stolen, no crime was committed. The court reasoned that an unsuccessful attempt to do that which is not a crime cannot be held to be an attempt to commit the crime specified.[71] Although the court was persuaded that the defense of impossibility is "so fraught with intricacies and artificial distinctions that [it] has little value as an analytical method for reaching substantial justice",[72] the court nonetheless determined that the problem was more properly remedied through legislation, rather than by court decision.

In response to such decisions, many jurisdictions have moved legislatively to limit the defense of impossibility. Many states have adopted the Model Penal Code developed by the American Law Institute,[73] which eliminates the defense as it applies to all attempted crimes. Utah

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69/ See, People v. Parker, 217 Cal. App. 2d 422, 31 Cal. Rptr. 716 (1963); State v. Moretti, 52 N.J. 182, 244 A.2d 499 (1968); People v. Huff, 339 Ill. 328, 171 N.E. 261 (1930).

70/ See, People v. Jaffe, 185 N.Y. 497, 78 N.E. 169 (1906); People v. Rollino, 37 Misc. 2d 14, 233 N.Y.S.2d (1962); Booth v. State, 398 P. 2d 863 (Okla. 1965); State v. Taylor, 345 Mo. 325, 133 S.W.2d 336 (1939); State v. Porter, 125 Mont. 503, 242 P.2d 984 (1952).

71/ United States v. Hair, 356 F. Supp. at 342.

72/ State v. Moretti, 52 N.J. at 182.

73/ See, A.L.I. Model Penal Code, Tentative Draft No. 10 (1960).

one state which has adopted this approach. In the case of State v. Sommers, 596 P.2d 1110 (1977), the Supreme Court of Utah upheld the constitutionality of a statute which eliminated the defense of impossibility. The court held that elimination of the defense did not violate the right of fundamental fairness implied in the due process clause of the Fourteenth Amendment. Noting that "the defense of impossibility is not a fundamental right essential to an Anglo-American regime of ordered liberty", the court further stated that the express abolition of such a defense advances the fundamental principles of liberty and justice which support all our civil and political institutions.[74/]

C. Penalties.

The penalties for the offense of receiving stolen property are set forth in subsection (c) of section 132. As under current law, both felony and misdemeanor penalties are provided depending upon the value of the property obtained. If the property has a value of $250 or more, the offense is a felony punishable by imprisonment for up to 7 years or a fine of up to $5,000 or both. If the value of the property is less than $250, the offense is a misdemeanor punishable by a fine of up to $1,000 or imprisonment for up to 1 year, or both.

74/ State v. Sommers, 569 P.2d at 1111.

SUBTITLE 5: Forgery

Subtitle 5 contains two sections. Section 141 defines the offense of forgery. Section 142 sets forth the penalties for forgery. The penalties have been graded according to the value and nature of the forged instrument. The provisions of this subtitle are in large part derived from the District of Columbia Law Revision Commission's 'Basic Criminal Code'.

Section 141: Forgery.

A. In General.

Section 141 defines the offense of forgery. This section is not intended to substantively change the current law with respect to forgery. Rather, this section is designed to clarify and codify the existing law.

B. Present District of Columbia law.

The District of Columbia criminal code presently contains two statutes relating to forgery: D.C. Code, section 22-1401 and section 22-1402.

D.C. Code section, 22-1402 relates to forging or imitating brands or packaging of goods. This statute makes it a criminal offense to wilfully forge or imitate brands, wrappers, labels, trademarks, bottles or packages, calculated to deceive the public, with the intent to pass off the item falsely as the product of another. This statute is not repealed or amended by Bill 4-133.

D.C. Code, section 22-1401 is the current general forgery statute. It provides:

> Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another or passes, utters, or publishes, or attempts to pass, utter or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged with the intent to defraud or prejudice the right of another.

Like the common law, this statute establishes two distinct offenses--forgery and uttering. The offense of forgery is completed once an instrument is falsely made or altered with intent to defraud. A second and distinct offense is committed when the instrument is uttered.[75/]

Under the current law, there are three elements which must be proven in order to sustain a conviction for forgery.[76/] First, the prosecution must prove that the offender falsely made or altered a writing. It is not necessary that the whole instrument be falsified or altered. Rather, it is only necessary to show that it contains some material misrepresentation of fact.

The second element which must be shown is that the offender falsely made or altered the writing with specific intent to defraud. To act with intent to defraud means to act wilfully and with specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.[77/] It is not necessary that anyone actually be defrauded or that the offender had the

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75/ Read v. United States, 299 F. 918 (D.C. Cir. 1923), cert. denied, 267 U.S. 596 (1925); United States v. Peters, 434 F. Supp. 357 (1977), aff'd in part and vacated in part, 587 F.2d 1267 (D.C. Cir. 1978).

76/See, D.C. BAR ASSOC. JURY INSTRUCTION No. 4.53 (3d ed. 1978).

77/See, D.C. BAR ASSOC. JURY INSTRUCTION No. 3.04 (3d ed. 1978).

intent to defraud any particular person. He or she need only have the intent to defraud someone.[78] However, intent to defraud may not be presumed from the mere making of a false instrument.[79] It may be found on the basis of some affirmative act or on the basis of other circumstances.[80] Mere negligence will not suffice.

The final element which must be proven is that the falsely made or altered writing was apparently capable of effecting a fraud. This element is established when it is shown that any person of ordinary intelligence could reasonably have been deceived by it. It is not necessary that anyone actually suffered loss.[81] Additionally, if the offender is charged with forging the name of a real or existing person, the prosecution must also prove that the offender forged or uttered the instrument in question without authority.[82]

There are five essential elements which must be established in order to sustain a conviction for uttering.[83] They are as follows:

1. The writing in question was falsely made or altered;

2. The offender passed or attempted to pass the writing to someone representing it to be true and genuine;

78/ Dowling v. United States, 41 D.C. App. 11 (1913).

79/ Frisby v. United States, 38 D.C. App. 22 (1912).

80/ Bradley v. United States, 420 F.2d 181 (D.C. Cir. 1969).

81/ Milton v. United States, 110 F.2d 556 (D.C. Cir. 1940).

82/ United States v. Gilbert, 433 F.2d 1172 (D.C. Cir. 1970).

83/ See, D.C. BAR ASS'N JURY INSTRUCTION NO. 4.53(b) (3d ed. 1978).

3. The offender did so knowing it was falsely made or altered;

4. The offender acted with specific intent to defraud; and

5. The falsely made or altered writing was apparently capable of effecting fraud.

C. The Offense.

The offense of forgery is defined in subsection (b) of section 141 as making, drawing, or uttering a forged written instrument with intent to defraud. Like the current forgery statute, this section contains two separate offenses--forgery and uttering. For the purpose of analysis, the section is broken down into its component parts.

a. "Making, drawing or uttering."

The conduct prohibited by this section is described by the phrase "making, drawing or uttering". The terms "making and drawing" apply to the offense of forgery. The term "making" is taken from the current forgery statute and is intended to have the same meaning under this section as it does under the current law. Although the term "drawing" is not used in the current forgery statute, inclusion of the term is not intended to alter substantively the present law. The term "draw" is part of the terminology used in the Uniform Commercial Code.[84/] However, as used in this context, the term is not intended to limit the offense to forgery of commercial instruments.

The term "utter" is defined in subsection (a) of section 141 to mean "to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, or certify." The term "utter" is not currently defined in the District of Columbia Code, although the term is used in

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84/ D.C. Code, sec. 28:1-101 et. seq. (1981).

the current forgery statute. The definition provided in this section is intended to encompass a wide variety of ways in which a person may attempt to obtain value from the forged instrument. As such, the term is meant to be broadly construed.

It is also important to note that, in accordance with the definition of "uttering," there is no requirement that the person be successful in passing off the instrument in order to be liable under this section. It is sufficient for a conviction for uttering that an offender display, present, or use the forged written instrument with the intent to defraud. In this respect, section 141 is identical to the current law.[85/]

b. "A forged written instrument".

The term "forged written instrument" is defined in subsection (a) of section 141. As defined, the term means any written instrument that purports to be genuine but which is not because it: (1) has been falsely made, altered, signed, or endorsed; (2) contains a false addition or insertion; or (3) is a combination of parts of two or more genuine written instruments. This definition is intended to carry forward the present law in this regard.

The language "purports to be genuine" expresses the concept that the instrument must be reasonably adopted to deceive a person of ordinary intelligence. In this respect, the language carries forward the current law.[86/]

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85 /Read v. United States, 299 F. at 918; United States v. Briggs, 54 F. Supp. 731 (D.D.C. 1944).

86/ See, Dowling v. United States, 41 D.C. App. at 11; Read v. United States, 299 F. at 918.

The language "falsely made, altered, signed or endorsed" carries forward the traditional meaning of acting without authority or beyond any authority given. Like the current law, this section is intended to forbid signing a fictitious name[87/] as well as signing the name of another existing person and holding it out to be the signature of that person.[88/] This language also covers unauthorized completions of a written instrument[89/] in such situations as when an agent makes, signs, or endorses a written instrument in disobedience of the principal's instructions or by exceeding agent's authority.[90/] This is consistent with the current law.

The language "falsely... altering" a written instrument is intended to cover making any unauthorized change in a document.

The phrase "contains a false addition or inserting" in the definition of "forged written instrument" covers, for example, adding an additional digit to the amount for which a check was issued.

Subsection (a)(3) provides examples of what is meant by a "written instrument". Currently, D.C. Code, section 101 defines a "writing" to include instruments wholly in writing or wholly printed, or partly printed and partly in writing. As used in this section, the term "written instrument" is meant to be broadly construed to be consistent with the latest technologies for marking and recording information.

87/ Milton v. United States, 110 F.2d at 556.

88/ United States v. Griever, 116 F.Supp. 755 (D.D.C. 1954).

89/ Martin v. United States, 435 A.2d 395 (D.C. 1981).

90/ See, Yeager v. United States, 32 F.2d 402 (D.C. Cir. 1929).

At common law, the offense of forgery was limited to actions involving obligatory instruments. The current forgery statute, however, refers to any writing which might operate to the prejudice of another. It is intended that the term "written instrument" as used in section 141 carry forward the same meaning. As such, term is meant to be "of almost limitless scope".[91/]

The list of written instruments provided in subsection (a)(3) is not intended to be exclusive. The list includes the following types of instruments:

(1) a security, as defined in D.C. Code, section 28:8-102(a);

(2) a bill of lading, as defined in D.C. Code, section 28:1-201(6);

(3) a document of title, as defined in D.C. Code, section 28:1-201(15);

(4) a draft, as provided in D.C. Code, section 28:3-104;

(5) a check, as provided in D.C. Code, section 28:3-104;

(6) a certificate of deposit, as provided in D.C. Code, section 28:3-104;

(7) a letter of credit, as provided in D.C. Code, section 28:3-104;

(8) a stamp, legal tender, or other obligation issued by a domestic or foreign government;

(9) a stock certificate;

(10) a money order;

(11) a money order blank;

(12) a traveler's check;

(13) any document evidencing indebtedness;

(14) a certificate of interest or participation in any profit sharing agreement;

91/ United States v. Briggs, 54 F. Supp. 731 (D.D.C. 1944)

(15) a transferable share;

(16) an investment contract;

(17) a voting trust certificate;

(18) a certificate of interest in any tangible or intangible property;

(19) any certificate or receipt for or warrant or right to subscribe to or purchase items 9 through 18;

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

(21) any other instrument commonly known as a security or defined as a security by an Act of Congress or a provision of the District of Columbia Code.

While the specific items on the list are documents having legal efficacy, the term "written instrument" is intended to cover other types of instruments and documents -- such as court praecipes [92/], credit card slips [93/], documents filed in administrative proceedings [94/], and deeds [95/].

C. "Intent to defraud".

Section 141 requires that the offender act with intent to defraud. this provision is intended to carry forward the current law with respect to the intent element of the offense. As under current law, it is not required that the offender have the intent to defraud any particular person. An intent to defraud someone will be sufficient. Juries in

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92/ See, Morgan v. United States, 309 F.2d 234 (D.C. Cir. 1962), cert. denied, 373 U.S. 917 (1963), rehearing denied, 374 U.S. 858 (1963).

93/ See, United States v. Gilbert, 433 F.2d at 1172.

94/ See, Mas v. United States, 151 F.2d 32 (D.C. Cir. 1945), cert. denied, 326 U.S. 776 (1945).

95/ United States v. Brooks, 3 MacArthur (10 D.C.) 315 (1879).

the District of Columbia are often instructed that the phrase "intent to defraud" means to act wilfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.[96/] This definition accurately describes the intended meaning of the phrase as used in this section.

Section 142: Penalties for Forgery.

Section 142 sets forth the penalties for forgery. The penalties are divided into three (3) grades based upon the value and nature of the forged instrument. All of the grades carry felony penalties, as under the current law.

The first category is a felony punishable by up to 10 years imprisonment or a fine of up to $10,000, or both if the instrument is:

(a) a stamp, legal tender or other instrument issued by a government;

(b) a stock, bond or other instrument representing an interest in or claim against an organization or corporation;

(c) a public record;

(d) an official government instrument;

(e) a payroll check; or

(f) a deed, will, contract or other commercial instrument.

This penalty also applies to forgery of any instrument having a value of $10,000 or more.

The second category is a felony punishable by imprisonment for up to 5 years or a fine of up to $5,000, or both, if the instrument is:

96/ See, D.C. BAR ASS'N JURY INSTRUCTION NO. 3.04 (3d ed. 1978).

(a) a token, fare card or other symbol of value used in the place of money;

(b) a prescription for a controlled substance; or

(c) any instrument having a value of $250 or more.

The third category is a felony punishable by up to 3 years imprisonment or a fine of up to $2,500, or both. This penalty applies in any case which does not fit into one of the above categories.

The current penalty for forgery is imprisonment for not less than 1 year nor more than 10 years. D.C. Code, section 22-1401 does not presently prescribe a fine as a possible sentence.

SUBTITLE 6. Extortion and Blackmail

Subtitle 6 contains two sections. Section 151 redefines the offense of extortion and section 152 redefines the offense of blackmail.

Section 151: Extortion

A. In General and Present District of Columbia Law.

Section 151 defines the offense of extortion. The definition is largely derived from the Hobbs Act (18 U.S.C. §1951) and is similar to the extortion law currently in effect in the state of Maryland (M.D. Code, Art. 27, section 562B and 562C).

Extortion is currently defined in D.C. Code, section 22-2306. This statute prohibits transmitting within the District of Columbia any communication containing (1) any demand or request for ransom for the release of any kidnapped person; (2) any threat to kidnap any person or any threat to injure the person of another; or (3) any threat to injure the property or reputation of any person or to injure the reputation of a deceased person, or to accuse any person of a crime. It is required that the offender commit one of the above acts with the "intent to extort from any person, firm, association or corporation, any money or other thing of value".

B. The Offense.

The offense of extortion is divided into two distinct sections. The gravaman of both sections is the act of obtaining or attempting to obtain property of another. As defined in section 101(3) of the bill, the term "property" is broadly defined to include anything of value. The term "property of another" is defined in section 101(4) of the bill to mean property in which a government or person other than the offender has an

interest which the offender is not privileged to interfere with or infringe upon without consent.

The first section prohibits obtaining or attempting to obtain property of another with the other's consent which was induced by (1) wrongful use of actual or threatened force or violence; or (2) wrongful threat of economic injury.

The threat of force or violence may be a threat against any person and is intended to cover threats that anyone will cause physical injury to or kidnapping of any person. The threat of force or violence also covers a threat of property damage or destruction. The same types of threats are covered under current law.

The threat of economic injury is new to District of Columbia law on extortion. The threat, however, must be "wrongful". The term "wrongful" is used in other criminal statutes contained in the District of Columbia Code. As noted in Masters v. United States, 42 App. D.C. 350, 358 (1941), the term "wrongful" when used in criminal statutes implies an evil state of mind.[97/] Thus this section is not intended to cover the threat of labor strikes or other labor activities. It is also not intended to cover consumer boycotts. However, such conduct would be prohibited by this section if, for instance, a leader of an organization threatens to strike or boycott in order to extort anything of value for his personal benefit, unrelated to the interests of the group which he represents.

97/ See also, Anzoategui v. United States, 335 F.2d 1000 (D.C. Cir. 1964)

The second paragraph of subsection (a) prohibits obtaining or attempting to obtain property of another, with the other's consent, which was obtained under the color or pretense of official right. This section codifies a common law offense which is not currently codified in the District of Columbia criminal code.

This section prohibits a public officer from obtaining or attempting to obtain property of another not due them or their office. The language used in this section follows the language of 18 U.S.C. §1951(b)(2). There are numerous federal court decisions interpreting this language which may be adopted in construing this section of the bill.

In accordance with federal case law, the final clause of definition of extortion in 18 U.S.C.S. section 1951(b)(2), positing extortion "under color of official right", repeats the common law definition of extortion as a crime which could only be committed by a public official and which did not require proof of threat, fear, or duress.[98/] Extortion "under color of official right" is thus established whenever the evidence shows beyond reasonable doubt the wrongful taking by a public officer of money not due to him or his office, whether or not taking was accomplished by force, threats, or use of fear. It does not matter whether the public official induces payments to perform his duties or not to perform his duties, so long as motivation for payment focuses on the recipient's office. Proof of extortion "under color or official right" thus requires a showing that the extorted party had at least a reasonable belief that the offender had the official power through which the extortion was performed. There is no requirement that the official have the actual power needed to perform the act which is the basis of extortionate scheme.

98/ See, United States v. Brown, 540 F.2d 364, 372 (8th Cir. 1976).

Subsection (b) of section 151 sets forth the penalty for extortion as a fine of not more than $10,000 or imprisonment for up to 10 years, or both.

Section 152: Blackmail.

A. In General and Present District of Columbia Law.

Section 152 defines the offense of blackmail. As under current law, blackmail and extortion are defined as separate and distinct offenses in Bill 4-133. The offense of blackmail is currently codified in D.C. Code, section 22-2305. This statute makes it a crime to accuse or threaten to accuse a person of a crime, or any conduct which, if true, would disgrace the person or subject him or her to the ridicule or contempt of society, or to expose any person's infirmities or failings, with the intent to (1) extort anything of value from such person or (2) compel the person to threaten accused to do or refrain from doing any act.

B. The Offense.

The conduct is prohibited by section 132 is:

(1) threatening to accuse any person of a crime; or

(2) threatening to expose a secret or publicize an asserted fact which may subject a person to hatred, contempt or ridicule; or

(3) threatening to impair the reputation of any person.

The type of threats prohibited by this section are the same as those prohibited by current law, except that a threat to injury one's reputation is currently prohibited by the extortion statute (D.C. Code, section 22-2306).

To sustain a conviction under this section, it is required that the prosecution prove that the offender acted with the intent to "obtain property of another or cause another to do or refrain from doing any act". The term "property" is defined in section 101(3) of the bill to mean anything of value. As such, the requirement of an intent to obtain property of another is consistent with current law. The alternative form of intent

the intent to cause another to do or refrain from doing any act, is also consistent with current law.

Subsection (b) of this section carries forward the current penalty for blackmail which is a fine of up to $1,000 or imprisonment for not more than 5 years, or both.

TITLE II. ENHANCED PENALTY

Title II of Bill 4-133 provides an enhanced penalty for those who steal from senior citizens. The need for this provision is discussed on pages 6 through 8 of the Committee on the Judiciary's report on Bill 4-133. This special penalty provision is new to the District of Columbia law.[99/]

Section 201: Enhanced Penalty

Subsection (a) of section 201 authorizes an enhanced penalty for any person who commits one of the listed offenses against an individual who was 60 years of age or older at the time of the offense. The offenses to which this penalty applies are listed in subsection (b). The offenses are as follows:

(1) robbery, as set forth in D.C. Code, section 22-2901;

(2) attempted robbery, as set forth in D.C. Code, section 22-2902;

(3) theft, as set forth in section 111 of this bill;

(4) attempted theft, the penalty for which is set forth in D.C. Code, section 22-103;

(5) extortion, as set forth in section 152 of this bill;

(6) fraud in the first degree, as set forth in section 121 of this bill; and

(7) fraud in the second degree, as set forth in section 121 of this bill.

99/ In 1977 the California legislature enacted a separate penalty provision for those who commit certain crimes against senior citizens. Cal. Penal Code, section 1203.09. The constitutionality of this provision has been upheld by the California Supreme Court. In the case of People v. Peace, 166 Cal. Rptr. 202 (1980), the California Supreme Court held that the statute did not violate equal protection principles. The court stated that the legislature was empowered to draw a distinction in penalties based upon differences in the victims involved. Thus, the legislature is entitled to differentiate among criminal offenders on the basis of the seriousness of their criminal acts. People v. Peace, 166 Cal. Rptr. at 207.

The term "commits" as used in this section is meant to be interpreted to cover persons who act as principals as well as persons who aid and abet in the commission of one of the offenses.[109/] The term "person" is intended to include individuals as well as corporations, partnerships, associations and other legal entities. Thus, individual defendants as well as corporate defendants are subject to the enhanced penalty.

In order for the enhanced penalty to apply, the offense must have been committed against an individual who was 60 years of age or older at the time of the offense. The victim's age at the time of the offense is a factual matter. The term "individual" is used to describe the victim and is intended to only cover natural persons. The term is not intended to cover such entities such as corporations, partnerships, associations, or other organizations. Thus, for example, while a corporation that was formed more than 60 years ago may be the victim of a theft, the enhanced penalty section would not apply.

The penalty authorized by this section is a maximum fine of 1 1/2 times the amount of the maximum fine authorized for the offense or a maximum term of imprisonment which is 1-1/2 times the maximum term of imprisonment authorized for the offense, or both. Thus, for example, a person who commits a first degree theft against a senior citizen would be subject to a fine of up to $7,500 and term of imprisonment for up to 15 years, even though the authorized penalty for this offense is a maximum fine of $5,000 and/or a maximum term of imprisonment of 10 years.[101/]

100/ See, D.C. Code, sec. 22-105 (1981).

101/ See, Section 112 of Bill 4-133.

Subsection (b) sets forth the offenses to which the enhanced penalty shall apply.

Subsection (c) provides an affirmative defense to a charge brought under this section. In accordance with this subsection, it is an affirmative defense that the offender knew or had reason to believe that the victim was not 60 years of age or older at the time of the offense. As with other affirmative defenses, the burden is upon the defendant to raise the defense and go forward with evidence with respect to the defense. Naturally, the prosecution retains the ultimate burden of proof.

TITLE III. BRIBERY OFFENSES

Title III of the bill deals with bribery offenses. The title contains three sections. Section 301 defines terms used in the bribery title. Section 302 relates to bribery of public servants and section 303 deals with bribery of witnesses.

Section 301: Definitions for Bribery Offenses.

Section 301 provides definitions for terms used in title III of the bill. This section defines six terms which will be discussed in the context of the section in which the term is used. The definition of the terms "Court of the District of Columbia" and "official proceeding" apply to section 303 which relates to bribery of a witness. The remaining defined terms, "juror", "official action", "official duty" and "public servant", relate to bribery of a public servant.

Section 302: Bribery.

A. In General.

Section 302 relates to bribery of a public servant. Unlike the current bribery statute (D.C. Code, section 22-701), this section penalizes both the offering of a bribe to a public servant and the acceptance of a bribe by a public servant. This section has been derived in part from the proposed federal criminal code (S. 1630).

B. Present District of Columbia Law.

Bribery is currently codified in D.C. Code, section 22-701. This statute prohibits promising, offering, giving (or causing the same) any money or other thing of value to any executive, judicial, or other officer or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict

or evidence of any such person or with intent to influence him or her to commit or aid in, or to collude in any fraud. While this statute makes it a crime to offer or give money or thing of value to a public servant, it does not prohibit the situation in which a public servant accepts or solicits a bribe.

There are three elements to the offense described in the current statute. The first is that the person to whom the bribe was offered was, at the time of the offense, an executive, judicial or other officer, a juror, a witness, or another person "acting in an official function". The term "official function" is not limited to those specifically defined or imposed by statute. Rather, the term has reference to acts official in character, something within the legal duty of the person performing them.[102/]

The second element which must be proven is that the offender promised, offered, gave or caused to be promised, offered or given, money or other thing of value for the payment of money, or for the delivery or conveyance of anything of value.

Finally, it must be proven that the offender did so with the intent to influence the decision, action, verdict or evidence of the recipient on any question, matter, cause or proceeding or that the offender did so with the intent to influence the recipient to commit or aid in committing, or to collude in or allow fraud.

D.C. Code, section 22-704 relates to corrupt influence. This statute makes it an offense to "corruptly" give any money, present, or

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102/ Benson v. United States, 27 App. D.C. 331 (1906).

other bribe to a "ministerial, administrative, executive or judicial officer" of the District of Columbia or to "any employee or other person acting in any capacity for the District of Columbia" with intent to influence that person's action on any pending matter or matter which may come before him with intent to cause him to act "with partiality or favor, or otherwise than is required by law". Unlike the D.C. Code, section 22-701, this statute makes it a crime for such an officer to receive any money, bribe or present with the proscribed intent or purpose. This statute also prohibits what are commonly referred to as "kickbacks" in government contracts. The penalty for an offense under D.C. Code, section 704 is imprisonment for not less than six months nor more than five years. This statute is not repealed by Bill 4-133.

D.C. Code, section 22-702 prohibits receiving money, property or other valuable consideration for giving or procuring an office or promotion from the Council of the District of Columbia. The statute also makes it a crime to offer any money, property, or valuable consideration for procuring any such "office, place, or promotion in office".

D.C. Code, section 22-2602 relates to bribery of officers or guards at the D.C. Jail or "any attache or employee connected therewith". The statute makes it an offense to give "any fee, compensation, reward or gratuity" to any such person for certain enumerated acts.

C. The Offense.

Section 302 relates to bribery of public servants. The term "public servant" is defined in section 301(6) to mean any officer, employee or other person authorized to act for or on behalf of the

District of Columbia government. The definition includes jurors of the District of Columbia. The term "juror" is defined in section 301(2) to mean any grand, petit or other juror of the District of Columbia. The term also covers persons who have been selected or summoned as a prospective juror and, thus, is not intended to be limited to those persons actually serving on a jury.

The term "public servant" does not include witness. Bribery of witnesses is treated in a separate section of the bill, section 303. Nor does the term "public servant" include independent contractors. The decision to exclude independent contractors from the scope of the bribery provision was based upon the recommendations of the D.C. Law Revision Commission. The question of whether a person is an independent contractor in the context of the bribery provision turns on the actual control exercised by the District of Columbia government over the contractor. Anyone who was actually under the control of the District government would not be an independent contractor, and therefore would be subject to prosecution under section 302.

The term "public servant" also includes persons "elected, nominated or appointed to be a public servant". This language was adopted from the D.C. Law Revision Commission's proposed bribery statute. It is intended that the phrase include those who have been actually elected, nominated, or appointed.

The elements of the offense of bribery as set forth in section 302 are as follows:

(1) The offender, directly or indirectly, offered, gave or agreed to give anything of value to a public servant or the offender, directly or

indirectly, solicited, demanded, accepted or agreed to accept anything of value as a public servant;

(2) such acts were done corruptly;

(3) such acts were done in return for an agreement that:

(a) an official act of the public servant will be influenced thereby; or

(b) such public servant will violate an official duty; or

(c) such public servant will commit, aid in committing, collude in or allow any fraud against the District of Columbia.

The first element of the offense relates to the prohibited conduct. The conduct prohibited by this section includes, the acts of offering as well as actually giving, and soliciting as well as actually receiving. This language is intended not only to cover the situations where the bribery attempt is actually successful but also the situation where the attempt is unsuccessful. There is no requirement that an agreement actually be reached. Therefore, if a person "corruptly" offers something of value to a public servant with the intent to get an agreement from that person that he or she will be influenced thereby and the public servant refuses, the person offering the bribe is nonetheless guilty of bribery under this section.

The prohibited acts may be done "directly or indirectly". This language is intended to cover the situation where an intermediary is used or where it is agreed that the thing of value will be given to someone else or to some organization, other than the public servant being bribed, in return for his or her being influenced.

The offense of bribery prohibits the offer or acceptance of "anything of value". The term "anything of value" is defined in D.C. Code, section 22-102 to mean things possessing actual as well as intrinsic

value. The term is not limited to things of pecuniary value. The current federal bribery statute uses the term "anything of value".[103] While all the bribery cases reported under that statute have in fact involved pecuniary payments. The drafters of the proposed federal criminal code chose not to limit the offense of bribery to pecuniary payments. The rationale for the decision was that while such a change would not drastically change the current practice, it would significantly limit the current law. The effect of such a change would be to immunize a number of serious bribery situations involving non-pecuniary payments. The decision not to limit the offense of bribery to pecuniary payments follows this rationale. It is important to note, however, that the term "anything of value" is limited by the term "corruptly". This qualification follows the current federal law. The addition of the word "corruptly" precludes prosecutions based on such accepted practices as election promises.[104]

The second element of the offense described in section 302 is that the above acts must be done "corruptly". This term is used in the current federal bribery statute.[105] The term bespeaks of a high degree of criminal knowledge and is used to indicate that the act must be done "voluntarily and intentionally with the bad purpose of accomplishing either an unlawful end or result or a lawful end or result by some unlawful method or means."[106]

103/ 18 U.S.C. §201 (1970).

104/ See, S. Rept. No. 97-307, 97th Cong., 1st Sess. (1981).

105/ See, 18 U.S.C. §201 (b) and (c) (1970).

106/ Devitt & Blackmar, Federal Practice and Jury Instructions, §34.08 (1977).

Thus, while it is not corrupt to influence a public servant, it is corrupt to do so by means of offering money or other things of value to accomplish that end.[107/]

The third element is that the acts must be done "in return for" an agreement or understanding. This language is intended to capture the concept of quid pro quo which has traditionally been the gravamen of the offense of bribery. The concept is basically that of a bargain. In other words, the person is offering something in order to get something in return.

The types of agreements or understandings that are prohibited are as follows:

1. An agreement or understanding that the public servant to whom the bribe is offered or who solicits the bribe will be influenced in the performance of his or her official acts. The term "official acts" is defined in section 301(4) to mean any conduct that involves an exercise of discretion and includes any decision, opinion, recommendation, judgment or vote.

2. An agreement or understanding that the public servant will violate an official duty. The term "official duty" means any conduct which does not involve an exercise of discretion and is intended to include ministerial acts. An official duty may be violated by either acting affirmatively or omitting to do an act.

3. An agreement or understanding that the public servant will commit any fraud or collude in any fraud against the District of Columbia. An example of this type of conduct would be offering something

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107/ See, United States v. Anderson, 509 F.2d 312 (D.C. Cir. 1974), cert. denied, 420 U.S. 991 (1975).

of value to an officer in charge of administering a government contract in return for his or her agreement to ignore the failure of the contractor to meet the specifications of the contract. The offense of bribery applies only to future conduct on the part of the public servant and does not apply to past acts.

Subsection (b) of section 302 states that nothing in this section shall prohibit concurrence in official action in the course of legitimate compromise between public servants. This language has been derived from the federal criminal code proposal (S. 1630). This language clarifies that log-rolling is excluded from the context of bribery.

Subsection (c) sets forth the penalty for bribery as imprisonment for not more than ten years and/or a fine of not more than $25,000 or three times the amount of the thing of value offered or solicited, whichever is greater. The current penalty for bribery under D.C. Code, sec. 22-701 is a fine of not more than $500 or imprisonment for not more than 3 years or both.

Section 303: Bribery of a Witness.

A. In General and Present District of Columbia Law.

Section 303 prohibits bribery of witnesses. Bribery of witnesses is currently prohibited by D.C. Code, section 22-701. The current law covers attempts to bribe witnesses but does not make it a crime for a witness to solicit or accept bribes. This section covers both situations.

B. The Offense.

Section 303 relates to witness bribery. Although the term "witness" is not used in the section, the section applies to those who may provide

testimony in any court proceeding or proceeding before any agency or department of the District of Columbia government. Like the obstruction of justice statute, this section is intended to cover persons who know or are suppose to know material facts about a case which is pending and who may be called to testify. It is not necessary that the person actually be under subpoena at the time of the offense. However, it is intended that there be a present expectation or intention that the person will be called to testify.

The acts prohibited by this section include the acts of offering, giving or agreeing to give a witness anything of value and the acts of soliciting, demanding, accepting, or agreeing to accept anything of value as a witness. Like section 302, this section does not require that the bribery attempt be successful. It is sufficient to complete the offense that the bribe was offered or requested.

It is required under this section that the acts be committed "corruptly" in return for an agreement or understanding that the testimony of the recipient will be influenced or that the recipient will absent himself or herself from the proceeding.

The term "corruptly" as used in this section has the same meaning as it does under section 302. Likewise, the discussion of the term "anything of value" under section 302 is applicable to this section.

As in bribery of a public servant, this section applies only to future conduct on the part of the witness and does not apply to past acts. Thus, the section prohibits seeking an agreement that a person "will be influenced" or "will absent himself or herself".

The phrase "in return for an agreement or understanding" expresses the concept of quid pro quo. The sought after goal in this case is to influence the testimony of a witness in any "official proceeding" or to have the witness absent himself or herself from an "official proceeding". The term "official proceeding" is defined in section 301(5) to mean any trial, hearing, or other proceeding. The term includes proceedings before any court of the District of Columbia or any agency or department of the District of Columbia government. The phrase "Courts of the District of Columbia" refers to Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

Subsection (b) of section 303 is derived from the current federal law and has been included to insure that witness fees and other legitimate expenses are not prohibited.

Subsection (c) sets forth the penalty for the offense as imprisonment for not more than 5 years or a fine of not more than $2,500 or both. The current penalty for bribery of a witness under D.C. Code, section 22-701 is a fine of not more than $500 or imprisonment for not more than 3 years, or both.

TITLE IV. PERJURY AND RELATED OFFENSES

Title IV of Bill 4-133 deals with offenses involving false statements. There are four offenses defined in this title of the bill. Section 401 defines the offense of perjury. This section carries forward the current definition of perjury and also includes, as perjury, the offense of false certification of acknowledgement by a notary. Section 402 defines the offense of subornation of perjury, which is currently undefined in the District of Columbia Code. Section 403 creates a new offense of false swearing, which penalizes the making of false statements in a document which is notarized. Section 404 provides a new offense of false statements.

Section 401: Perjury

A. In General and Present District of Columbia Law.

This section of the bill defines the offense of perjury. The offense is defined to include: (1) the traditional crime of perjury, which is making false statements under oath before a competent tribunal or officer; and (2) falsely certifying an acknowledgement while acting as a notary or person authorized to take proof of a certification.

Currently, the traditional crime of perjury is defined in D.C. Code, section 22-2501. Subsection (a)(1) of this section basically carries forward the current definition of the offense of perjury.

D.C. Code, section 22-1308 defines, as a separate offense, the crime of false certificate of acknowledgement. This offense has been incorporated in subsection (a)(2) of this section.

B. The Offense.

Subsection (a) of section 401 sets forth the offense of perjury. The subsection contains two separate provisions which define two distinct forms of perjury. The first provision, subsection (a)(1), states the

definition of the traditional crime of perjury and is intended to continue the present law in this regard. The language of subsection (a)(1) essentially duplicates the language used currently in D.C. Code, section 22-2501, although several minor changes have been made which are not intended to amend substantively the current law.

The elements of the offense of perjury contained in section 401(a)(1) are intended to be essentially the same as those provided by current D.C. law. Basically, there are five elements to the offense of perjury under this provision. The first element of the offense is that the defendant must have appeared before a "competent tribunal, officer or person". This language is adopted directly from D.C. Code, section 22-2501. As used in that statute, the term "tribunal" means an officer or body having authority to adjudicate matters.[108/] Tribunals include, for example, trial courts, grand juries and certain administrative bodies. As under current law, the provision is not limited to false testimony given before tribunals. The provision is intended to apply as well to false testimony given before other competent bodies and persons.

The term "competent" is found in the current perjury statute and, as used in this provision, is intended to have the same meaning as in current law. Competency basically refers to jurisdiction. As under current law, it must be demonstrated that the tribunal, officer, or person had personal jurisdiction over the defendant and subject matter jurisdiction or authority to consider the issues before it.[109/] This requires a showing that the tribunal, officer or person was properly convened.

108/ Meyers v. United States, 75 F. Supp. 486, 487 (D.C. D.C. 1948), aff'd., 171 F.2d 800, cert. denied, 336 U.S. 912 (1949).

109/ Christoffel v. United States, 338 U.S. 84 (1949).

The second element under this provision is that the defendant was duly sworn. This requirement is embodied in the language "having taken an oath or affirmation ..... in a case in which the law authorized such oath or affirmation to be administered". This language is taken from the current perjury statute. As under current law, this provision is not limited to oaths specifically prescribed by statute but covers all oaths "which the law authorizes". Consequently, a person could be convicted under this provision even if the oath was not created by law or specifically required by law provided that the oath was properly promulgated under an existing statute.[110/] In proving this element of the offense, it must also be shown that the oath was properly administered.[111/] Thus, even though the oath was authorized by law, statements made under oath cannot subject a person to criminal liability if the oath was administered by an officer who had no legal authority to administer the oath.[112/] Nothing in this provision is intended to change D.C. Code, section 14-101, which permits the use of an affirmation in lieu of an oath in cases in which a witness has conscientious objections against taking an oath.

The third element of the offense described in this provision is that the defendant gave testimony that he or she knew was false. Currently, D.C. Code, section 22-2501 provides that a person may be convicted of perjury for testifying to the truth of a fact "which he does not believe to be true". Under the current language, it is unclear whether a person could

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110/ Morgan v. United States, 309 F.2d 234 (D.C. Cir. 1962), cert denied, 373 U.S. 917, rehearing denied, 374 U.S. 858 (1963).

111/ United States v. Obermeier, 186 F.2d 243 (2d Cir. 1950), cert denied, 340 U.S. 951 (1951).

112/ United States v. Doshen, 133 F.2d 757 (3d Cir. 1943).

be convicted for making a statement that was literally true but which he or she believed to be false.[113/] To resolve any ambiguity in this regard, language has been added in this section of the bill which further requires that the testimony be, in fact, not true.

The fourth element of the offense prescribed by this provision is that the defendant "wilfully" gave the testimony. The term "wilfully" is adopted from the current statute and is intended to mean knowingly or intentionally.[114/]

The final element of this provision is that the testimony must be material. The ultimate test of materiality is whether the statement has a natural tendency to influence the tribunal, officer or person in his or her investigation of the facts, exercise of official discretion, and administration of the law.[115/]

Subsection (a)(2) of this section defines a second form of perjury under the bill, false certification of acknowledgements. This second perjury provision is similar to current D.C. Code, section 22-1308. However, several changes to the current law have been made based upon the recommendations of the D.C. Law Revision Commission. First, the current law limits liability to officers authorized to take proof of "an instrument which, by law, may be recorded". This limitation has been eliminated and the offense has been expanded to cover any person "authorized to take proof of certification" as to an oath or affirmation or an acknowledgement of an instrument.

113/ See, Bronston v. United States, 409 U.S. 352 (1973); Young v. United States, 212 F.2d 236 (D.C. Cir. 1954), cert. denied, 347 U.S. 1015 (1954).

114/ Maragon v. United States, 187 F.2d 79 (D.C. Cir. 1950), cert. denied, 341 U.S. 932 (1951).

115/ Robinson v. United States, 114 F.2d 475 (D.C. Cir. 1940).

The second change to the current statute is that the offense has been extended to cover any person who acts "as a notary public or other officer". The current statute is limited to persons who are actually "officers". The change in this language is intended to cover persons who act as notaries, even if that person is not in fact authorized to take proof or certification.

Other than the changes discussed above, the language used in this provision is taken directly from D.C. Code, section 22-1308. As under the current law, this provision prohibits the act of (1) certifying falsely that an instrument was acknowledged; or (2) certifying falsely as to any material matter in an acknowledgement. It is required under this provision that the act be done "wilfully". The term "wilfully" as used in this provision is intended to have the same meaning as in subsection (a)(1) and apply to acts done knowingly or intentionally.

Subsection (b) of section 401 sets forth the penalty for the offense of perjury, which, under the bill, includes both traditional perjury and false certification of an acknowledgement. The penalty is a fine of up to $5,000 or imprisonment for not more than 10 years, or both. The current penalty for perjury under D.C. Code, section 22-2501 is imprisonment for not less than 2 years nor more than 10 years. The current penalty for false certificate of acknowledgement under current D.C. Code, section 22-1308 is imprisonment for not less than 1 year nor more than 10 years. Neither offense currently carries a fine.

Section 402: Subornation of Perjury

A. In General and Present District of Columbia Law.

The offense of subornation of perjury is not currently codified in the District of Columbia Code. D.C. Code, section 22-2501 provides that the penalty for this offense shall be the same as for perjury, but

does not provide a definition for the offense. Consequently, the common law definition of subornation of perjury is applicable in the District of Columbia.

At common law, subornation of perjury was defined as procuring another to commit the crime of perjury.[116/] Section 402 of Bill 4-133 codifies this definition. As under existing law, the penalty for this offense is the same as that for perjury, set forth in the bill as section 401.

B. The Offense.

Section 402 defines the offense of subornation of perjury as wilfully procuring another to commit perjury. As previously noted, this definition is intended to codify the common law definition of the offense. As under common law, it is essential under this section that the perjury actually be committed by the suborned witness.[117/] Consequently, it is necessary that all the elements of perjury be committed including that the suborned witness appeared before a competent tribunal, officer or person, was duly sworn, gave false testimony which he or she knew was false, and wilfully gave such testimony which was in fact material.[118/] It is also essential that the person procuring the perjury must know or have reason to believe that the testimony given would be false and that the witness knew that the testimony was false.[119/]

116/ 60 Am Jur 2d Perjury §68.

117/ Hammer v. United States, 271 U.S. 620 (1926); Meyers v. United States, 171 F.2d 800 (D.C. Cir. 1948), cert. denied, 336 U.S. 912 (1949).

118/ Pyle v. United States, 156 F.2d 852 (D.C. Cir. 1946); Boney v. United States, 396 A.2d 984 (D.C. 1979).

119/ 70 C.J.S. Perjury §79.

The conduct which is prohibited by this section is the act of "procuring" ury. The term is intended to be broadly interpreted to include insti- ng, persuading, or inducing another by any means to commit perjury. s required, however, that the person act "wilfully". As under the ury section, the term "wilfully" in this context is intended to mean ingly or intentionally.[120/]

This offense is punishable by a fine of not more than $5,000 or isonment for not more than 10 years, or both. The penalty provided in section is the same as that set forth for the offense of perjury. The ent penalty for subornation of perjury is imprisonment for not less two years nor more than 10 years.

Section 403: False Swearing

In General and Present District of Columbia Law.

Section 403 creates a new offense of false swearing. There is no terpart to this offense in current District of Columbia law. This ion prohibits making false statements in a document which is required aw to be notarized.

The Offense.

Subsection (a) provides that a person commits the offense of false ring if he or she wilfully makes a false statement, in writing and under or affirmation, which is in fact material and is required by law to be n or affirmed before a notary or other person authorized to administer ns.

See, Maragon v. United States, 187 F.2d 79 (D.C. Cir. 1950), cert. denied, U.S. 932 (1951).

It is required under this section that the statement actually be false. As under the previous perjury sections, it is required that the defendant act "wilfully". The term "wilfully" denotes a state of mind and is intended to mean knowingly or intentionally. As such, the defendant must know that the statement is false. It is also required that the statement be in fact material. It is intended that the materiality of the statement is to be determined by the general standards established in Robinson v. United States.[121/] Accordingly, the statement must be one which would have a natural tendency to influence a decision-maker. It is also required that the statement be one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths and that the defendant must in fact swear to the truth of the statement before such a person. Finally, the statement must be in writing.

The penalty for this offense is a fine of not more than $2,500 or imprisonment for not more than 3 years, or both.

Section 401: False Statements

A. In General and Present District of Columbia Law.

Section 404 penalizes making false statements in connection with a government matter. Present District of Columbia law does not contain a general proscription against this type of conduct. Rather, there are numerous D.C. Code provisions which penalize making false statements in certain circumstances, such as before particular government boards and commissions. Section 404 provides a general false statements offense which is new to District of Columbia law.

121/ 114 F.2d at 475.

B. The Offense.

Section 404 provides criminal sanctions for making a false statement in writing to any instrumentality of the District of Columbia government. The language "instrumentality of the District of Columbia" is intended to cover all branches of government and any unit of government, such as boards, commissions, agencies and departments.

The state of mind required for the commission of this offense is a wilfull state of mind. As in the perjury provisions discussed above, the term is intended to mean knowingly or intentionally.

In order to be subject to criminal liability under this section, it is necessary that the statement actually be false and that it concern a material matter. The statement must also be made "under circumstances in which the statement could reasonably be expected to be relied upon as true." This language was adopted from the D.C. Law Revision Commission's proposed offense of perjury. The intent in adding this language is to exclude statements made in jest or made solely for the use of the person making them.

As noted, this section prohibits false statements made in writing. However, the section provides that criminal liability does not attach unless the writing in which the statement is made clearly indicates that criminal penalties are provided for making a false statement in the document. Thus, the form on which the statement is made must provide a warning clause which places persons on notice that the making of a false statement will subject them to criminal liability.

This offense is a misdemeanor punishable by a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.

TITLE V. OBSTRUCTION OF JUSTICE

Title V contains three provisions: section 501 sets forth definitions for terms used in the title; section 502 defines the offense of obstruction of justice; and section 503 defines the new offense of tampering with physical evidence.

Section 501: Definitions for Obstruction of Justice

Section 501 sets forth definitions for terms used in this title of the bill. Four terms are defined in this section of the bill.

Paragraph (1) defines the term "Court of the District of Columbia and the District of Columbia Court of Appeals. The term is not defined under current District of Columbia law although the term does appear in the current obstruction of justice statute, D.C. Code, section 22-703. The definition set forth in this paragraph is intended to clarify the current law.

Paragraph (2) defines the term "criminal investigator". This term is used in section 302(a)(3) and (4) of the bill. The definition set forth for this term is derived directly from the current obstruction of justice statute (D.C. Code, sec. 22-703), however, the current definition has been modified in one respect. As defined in Bill 4-133, the term includes "a prosecuting attorney conducting or engaged in a criminal investigation". Prosecuting attorneys, including attorneys of the Corporation Counsel's Office and the United States Attorney's Office, are not covered by the current definition of the term.

Paragraph (3) defines the term "criminal investigation" which is used in section 502 of the bill. The definition is adopted directly, without change, from the current obstruction of justice statute.

Finally, the term "official proceeding" is defined in paragraph (4). This term is used in section 502 of the bill which relates to tampering with physical evidence.

Section 502: Obstruction of Justice

A. In General and Present District of Columbia Law.

Section 502 defines the offense of Obstruction of Justice. The offense described in this section of the bill closely follows the current law, however, several changes and additions have been made.

Currently, the offense of obstruction of justice is codified in D.C. Code, section 22-703. The statute encompasses four separate offenses: (1) corruptly, by threats or by force, endeavoring to influence, intimidate, or impede any juror, witness or officer; (2) corruptly, by threats or force endeavoring to obstruct the due administration of justice; (3) willfully endeavoring by means of bribery, misrepresentation, intimidation or force or threats of force to delay or prevent communication to a criminal investigator; and (4) injuring a person or his property because the person gave information to such investigator.[122/]

B. The Offense.

Section 502(a) is divided into five paragraphs. Each paragraph describes a separate and distinct form of obstruction of justice. The first paragraph of subsection (a) relates to threatening a witness, juror or court officer. It prohibits a person from "corruptly, or by means of threats or force" endeavoring to influence, intimidate or impede a witness, juror or officer of the court. The language used in this paragraph is directly adopted from the current obstruction of justice statute, however, one major change has been made to the current law. The current statute requires the defendant to act "corruptly, by threats or force". This language has been changed in the bill to read "corruptly, or by threats or force" (emphasis added). The language used in the current statute severely limits the applicability of the offense by requiring the

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122/ See, D.C. BAR ASS'N JURY INSTRUCTION N. . 4.93 (3d ed. 1978); Ball v. United States, 429 A.2d 1353 (D.C. 1981).

endeavor be made by the use of threats or force. As amended this offense will resemble the federal obstrution of justice statute[123/] which contains no such limitation and instead covers any act, committed corruptly, in an endeavor to impede, influence or intimidate a witness, juror or court officer.[124/]

This change was strongly endorsed by the United States Attorney's Office for the District of Columbia. During the 1981 public hearings on Bill 4-133, Mr. Charles F.C. Ruff, then United States Attorney for the District of Columbia, noted:

> By making a corrupt endeavor to obstruct an offense whether or not threats or force are used, ... creates an obstruction statute which will provide the same flexibility in responding to this serious offense as is provided by the federal statute. Recent experience makes clear that this change is vital.

It should also be noted that the gap in the current local law cannot be avoided by simply prosecuting offenses which do not involve threats or force under the federal statute. It was recently held by a federal court that the Superior Court of the District of Columbia is not a "court of the United States" for the purposes of the federal obstruction of justice statute.[125/] Consequently, corrupt endeavors to influence witnesses and jurors involved in Superior Court proceedings must be prosecuted under the local statute. With the exception of this one change, the elements of the offense described in paragraph (1) are identical to those of the current law.[126/] The elements of the offense described in subsection (a)(1) are as follows:

123/ 18 U.S.C. §1503 (1970).

124/ See, Samples v. United States, .21 F.2d 263, 265-266 (D.C. Cir. 1941).

125/ United States v. Regina, 504 F. Supp. 629 (D.C. Md. 1980)

126/ See, D.C. BAR ASS'N JURY INSTRUCTION NO. 4.93 (3d ed. 1978)

(1) the defendant corruptly, or by means of threats or force, endeavored to influence a person;

(2) the person to be influenced was in fact a witness, juror or officer of the court;

(3) the defendant knew or had reason to know that the person was a witness, juror or officer of the court;

(4) the defendant made the endeavor with specific intent to influence, intimidate or impede the person in the discharge of his or her official duties; and

(5) at the time of the endeavor, there was a court proceeding pending in a court of the District of Columbia in which the person had an official duty to perform.

As under the current law, the term "witness" is intended to mean a person who knows or is supposed to know material facts about a case which is pending and who may be called to testify.[127/] While it is not necessary that the person actually be served with a subpoena to be considered a witness, it is necessary for a court proceeding to be pending at the time the endeavor to influence the person was made and for there to be a present expectation or intention that the person will be called to testify.[128/] A person retains the status of witness for at least the duration of the court proceeding.[129/]

To sustain a conviction under subsection (a)(1) it must be shown that the defendant "endeavored" to influence, intimidate or impede. The term

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127/ United States v. Jackson, 513 F.2d 456, 459 (D.C. Cir. 1975).

128/ United States v. Smith, 357 A.2d 418 (D.C. 1976).

129/ United States v. Jackson, supra.

"endeavor" has been interpreted under the current law to mean an effort to do or accomplish the results forbidden by the statute.[130/] The interpretation of the term as used in this section of the bill is intended to be the same. Thus, the statute prohibits attempts to influence, intimidate or impede. It is not necessary that the effort actually be successful.[131/]

Subsection (a)(1) also requires proof that the defendant acted, "corruptly, or by means of threats or force." As under the current law, the term "corruptly" means to act with an improper motive.[132/] The term "threats" means any action or words that have a resonable tendency to intimidate.[133/]

Paragraph (2) of subsection (a) relates to obstructing the due administration of justice. The language used in this paragraph is derived directly from the current law. The requirement, as under current law, that the endeavor be by means of threats or force, has not been changed under this subsection. There are two elements which must be proven to sustain a conviction under this part of subsection (a).[134/] First, it must be shown that the defendant corruptly, by means of threats or force, obstructed or impeded or endeavored to obstruct or impede the due administration of justice in a court of the District of Columbia. Second, it must be shown that the defendant acted with specific intent to obstruct the due administration of justice. It is not necessary that the threats or force actually be successful. The subsection prohibits "endeavors" to obstruct justice, as well as the actual obstruction of justice.

130/ United States v. Russell, 255 U.S. 138, 141 (1921); Osborn v. United States, 385 U.S. 323 (1966).

131/ Hall v. United States, 343 A.2d 35 (D.C. 1975); McBride v. United States, 393 A.2d 123 (D.C. 1978).

132/ United States v. Ryan, 455 F.2d 728 (9th Cir. 1972).

133/ United States v. Smith, 337 A.2d 499 (D.C. 1975).

134/ See, BAR ASS'N JURY INSTRUCTION NO. 4.93(B) (3d ed. 1978)

The third paragraph of subsection (a) relates to obstructing a criminal investigation. The language used in this paragraph is derived from the current obstruction of justice statute. While no change has been made to the language used in the current statute, the definition of the term "criminal investigator" has been modified by the bill. This term is currently defined to mean any person duly authorized by the Mayor to conduct or engage in a criminal investigation. The bill expands the scope of this term to include prosecuting attorneys conducting or engaged in a criminal investigation. As amended, the definition is intended to cover both attorneys of the Corporation Counsel's Office (who are designated by the Mayor) as well as the Assistant United States Attorneys for the District of Columbia (who are not designated by the Mayor) when engaged in conducting investigations of possible violations of District of Columbia criminal laws. The term "criminal investigation" is currently defined in D.C. Code, section 703(b), to mean an investigation of a violation of any criminal statute in effect in the District of Columbia. This definition has been restated in Section 501(3) of the bill without change.

Like the current law, the offense described in this part of the statute consists of three elements:[135/]

1. The defendant endeavored, by means of bribery, misrepresentation, intimidation, force, or threats of force to obstruct, delay or prevent the communication by a person to an investigation of the District of Columbia;

2. The communication was of information relating to a violation of a criminal statute then in effect in the District of Columbia; and

3. The defendant acted willfully and with specific intent to obstruct, delay or prevent the communication to the criminal investigator.

135/ See, D.C. BAR ASS'N JURY INSTRUCTION NO. 4.93(C) (3d ed. 1978)

Like the current laws, subsection (a)(3) prohibits the "endeavor" to obstruct and does not require that the effort actually be successful.[136/]

The fourth paragraph of subsection (a) relates to retaliation against an informant. This offense is currently codified in the obstruction of justice statute. As under the current law, the elements of this offense are as follows:[137/]

(1) The defendant injured a person or his or her property;

(2) The defendant inflicted the injury because that person or another person had given information to an investigator of the District of Columbia;

(3) The information related to a criminal investigation; and

(4) The defendant acted willfully and with specific intent to injure the person or his or her property on account of any person giving information to a criminal investigator during the course of a criminal investigation.

As previously noted, the definition of the term "criminal investigator" has been expanded to cover prosecuting attorneys. This definition, as set forth in Section 501(2) of the bill, applies to the offense described in this paragraph as well as the offense described in subsection (a)(3).

Paragraph (5) of the bill includes a fifth offense which constitutes obstruction of justice. This offense is not currently prohibited by D.C. Code, section 22-703. The new offense set forth in Subsection (a)(5) relates to retaliation against a witness, juror or court officer. This offense is derived from the federal obstruction of justice statute.[138/] Currently, D.C. Code, section 1-141(c) prohibits injuring any party or witness on account of that

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136/ See, United States v. Russell, supra.

137/ See, D.C. BAR ASS'N JURY INSTRUCTION NO. 4.93(D) (3d ed. 1978).

138/ 18 U.S.C. §1503 (1970).

person's attending or testifying with respect to any matter before the Council of the District of Columbia. However, there is no statute which prohibits inflicting such injury on account of a person testifying or appearing in a court proceeding. The creation of this new offense serves to fill this gap in the law.

The elements of the new retaliation offense are as follows:

(1) The defendant injured a person or his or property;

(2) The defendant inflicted the injury because that person or any other person had performed his or her official duty as a juror, witness or officer in a court of the District of Columbia;

(3) The defendant did so with specific intent to injure the person or his or her property on account of any person performing his or her official duty as a witness, juror or officer of the court.

This offense prohibits injury to a person and property damage or destruction. It is not necessary that the injury be inflicted on the person who was the witness, juror or court officer. Rather, it is sufficient if <u>any</u> person or his or her property was injured if the injury was inflicted because someone performed their duty as a witness, juror or court officer. Thus, for example, injuring a juror's spouse would be in violation of this new statutory offense if the injury was inflicted because of the juor's performance of his or her official duties.

It is not necessary that the proceeding be in process at the time the injury is inflicted. Retaliation against a juror, witness or court officer after a case has been concluded would also be prohibited.

The penalty for obstruction of justice under Bill 4-133 is a fine of not more than $1,000 or imprisonment for not more than 3 years, or both. This penalty is identical to the penalty set forth in the current law for the offense of obstruction of justice.

Section 508: Tampering With Physical Evidence

A. In General and Present District of Columbia Law.

Section 503 of the bill sets forth a new offense of tampering with physical evidence. Currently, there is no specific statute in the local criminal code which addresses this problem. Two related statutes are in effect but do not provide the same coverage. The first, D.C. Code, section 22-3107, prohibits maliciously destroying mutilating or concealing: (1) a record pertaining to any court or public office or any paper duly filed in such court or office; or (2) any record authorized by law to be made. This statute is primarily designed to protect the integrity of court records and it does not appear to address the destruction of evidence which may be used in a court proceeding. The only other statute in the current law that could possibly be used to prosecute a person who destroys evidence is D.C. Code, section 22-106, which relates to accessories after the fact. An accessory after the fact is basically defined as a person who, with knowledge of the principal crime, rendered aid to the perpetration of the crime.[139/] However, it is not clear whether under this statute a person who committed a crime and then destroyed evidence relating to the offense could be prosecuted as both a principle and an accessory after the fact to the same crime.[140/] While neither of these statutes has been repealed by Bill No. 4-133, it is clear that they do not adequately address the conduct of tampering with evidence. Section 503 of Bill 4-133 rectifies this void in the current law.

139/ Clark v. United States, 418 A.2d 1059 (D.C. App. 1980)

140/ See, Smith v. United States, 306 F.2d 286 (D.C. Cir. 1962)

B. The Offense.

There are basically three elements to the offense of tampering with physical evidence, as described in Section 503. First, the prosecution must show that the person altered, destroyed, mutilated, concealed or removed a record, document or other object. The language "alter, destroy, mutilate, conceal or remove" states the prohibited conduct. The language "record, document or other object" indicates the scope of this provision and is intended to cover a wide range of tangible articles which may constitute physical evidence. The term "other object" is not meant to be qualified by the terms "record or document". Consequently, the term "other object" is intended to cover tangible articles, such as weapons or clothes, and not just written or printed articles.

The second element of the offense is that the defendant must (1) know or have reason to believe that an official proceeding has begun, or (2) know that an official proceeding is likely to be instituted. The term "official proceeding" is defined in section 501(4) of the bill to mean any trial, hearing or other proceeding in any court of the District of Columbia or any agency or department of the District of Columbia government. The term is intended to include proceedings in which rights, issues or other matters are adjudicated as well as investigatory proceedings such as grand jury proceedings. It is not required that the official proceeding be in process when the evidence is destroyed. However, to sustain a conviction under this provision, it is necessary to prove at the time the defendant tampered with the evidence, he or she knew a proceeding was likely to be instituted if such a proceeding had not in fact begun.

The third element of the offense of tampering with physical evidence is that the defendant committed the above-described acts with the intent to impair either the integrity of the record, document or other object, or its availability for use in the official proceeding. This requirement is

the focus of the offense, for it is this element of specific intent which separates innocent acts from acts for which are sanctioned by criminal penalties.

The penalty set forth for this newly created offense is a fine of up to $1,000 or imprisonment for not more than 3 years, or both. This penalty is the same as the penalty set forth for obstruction of justice under Section 502 of the bill.

TITLE VI. AMENDMENTS AND REPEALERS

Conforming amendments and repealers are listed in Title VI of Bill 4-133. In general, the conforming amendments make stylistic changes which adopt the new terminology used in the bill. In general, repealers are made on the basis that: (1) the current statute has been replaced by one or more of the sections contained in other titles of this bill; or (2) the current statute penalizes conduct which is prohibited by other sections of the criminal code or is actionable under civil law.

The following charts, which were contained in the Committee's report on Bill 4-133, illustrate the changes made to the District of Columbia Code by Title VI of the bill. Chart A lists the D.C. Code sections which have been repealed by Bill 4-133. The chart also lists, where appropriate, the section of the bill which replaces the repealed statute. Chart B is provided for convenience and lists those statutes contained in Title 22 of the D.C. Code which relate to theft and white collar crimes but which are not repealed or modified by Bill 4-133. The listed statutes will remain intact as effective law. A more detailed analysis of each section follows the charts.

CHART A: PARALLEL REFERENCE CHART FOR D.C. CODE AND BILL NO. 4-133 (REPEALERS)

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-701	Definition and penalty.	Sec. 302, 303	Bribery of a public servant bribery of a witness.
22-702	Offering or receiving money, property, or valuable consideration to procure office promotion for Council.	Sec. 302	Bribery of a public servant
22-703	Obstruction of justice.	Sec. 502	Obstruction of justice.
22-1201	Embezzlement of property of District.	Sec. 111	Theft.
22-1202	Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.	Sec. 111	Theft.
22-1203	Embezzlement of note not delivered.	Sec. 111	Theft.
22-1204	Receiving embezzled property.	Sec. 131, 132	Trafficking in stolen proper Receiving sto property.
22-1205	Embezzlement by carriers and innkeepers.	Sec. 111	Theft.
22-1206	Embezzlement by warehouseman, factors, storage, forwarding or commission merchant.	Sec. 111	Theft.
22-1207	Violations of §22-1206 to 22-1206 where value of propertry less than $100.	Sec. 112	Penalties for Theft.

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-1208	Conversion by commission merchant, cosignee, person selling goods on commission, and auctioneers.	Sec. 111	Theft.
22-1209	Embezzlement by mortgagor of personal property in possession.	Sec. 111	Theft.
22-1210	Embezzlement by executors and other fiduciaries.	Sec. 111	Theft.
22-1211	Taking property without right.	Sec. 116	Taking propert without right.
22-1301	False pretenses.	Sec. 111, 121 and 124	Theft; Fraud; Fraudulent Registration.
22-1307	Wearing of using insignia of certain organizations.	Sec. 111, 121	Theft, Fraud.
22-1308	False certificate of acknowledgment.	Sec. 401	Perjury.
22-1401	Forgery.	Sec. 141	Forgery.
22-1404	Decedent's estate -- secreting or converting property, documents or assets.	Sec. 111, 121	Theft, Fraud.
22-1405	Same -- taking away or concealing writings.	Sec. 111, 121	Theft, Fraud.
22-1407	Fraud by use of slugs to operate controlled mechanism.	Sec. 111	Theft.
22-1408	Manufacture, sale, offer for sale, possession of slugs or devise to operate coin-controlled mechanism.	Sec. 121	Fraud.

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bil No. 4-133
22-1409	"Person" defined.	None	
22-2201	Grand Larceny.	Sec. 111, 112	Theft; Penaltie for Theft.
22-2202	Petit larceny; order of restitution.	Sec. 111, 112	Theft; Penaltie for Theft.
22-2203	Larceny after trust.	Sec. 111	Theft.
22-2204	Unauthorized use of vechicles.	Sec. 115	Unauthorized Use of Vehicles
22-2204(a)	Theft from vehicles.	Sec. 111	Theft.
22-2205	Receiving stolen goods.	Sec. 131, 132	Trafficking in stolen property Receiving stole
22-2206	Stealing property of Distrrict.	Sec. 111	Theft.
22-2207	Receiving property stolen from District.	Sec. 131, 132	Trafficking in stolen property Receiving stole property.
22-2208	Destroying stolen property.	Sec. 132, 503	Receiving stole property; tamper ing with physic evidence.
22-2301	Libel -- Penalty.	None	
22-2302	Same -- Publication.	None	

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bil No. 4-133
22-2303	Same -- Justification.	None	
22-2304	False charges of unchastity.	None	
22-2305	Blackmail.	Sec. 152	Blackmail.
22-2306	Intent to commit extortion by communication of illegal threats and demands.	Sec. 151, 152	Extortion; Blackmail.
22-2501	Perjury; subornation of perjury.	Sec. 401, 402	Perjury; Subornation of perjury.
22-2602	Misprisons by officers or employees of jail.	Sec. 302	Bribery of a public servant
22-3115	Offenses against property of electric lighting, heating, or power companies.	Sec. 111	Theft.
22-3116	Tapping gas pipes.	Sec. 111	Theft.
22-3117	Tapping injuring water-pipes; tampering with water meters.	Sec. 111	Theft.
22-3404	Kosher meat -- Sale; labeling; signs displayed where kosher and non-kosher meats sold.	Sec. 121	Fraud.
22-3405	Same -- Definitions.	Sec. 121	Fraud.
22-3406	Same -- Penalties	Sec. 122	Penalties for Fraud.

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bi No. 4-133
22-3409	Mislabelling potatoes -- Prohibited.	Sec. 121	Fraud.
22-3410	Same -- Sign to show grade.	Sec. 121	Fraud.
22-3411	Same -- Exception for potatoes.	None	
22-3412	Same -- Penalties.	Sec. 121	Penalties for Fraud.
22-3413	Procuring enlistment of criminals.	None	
22-3701	Issue of receipt for goods not received.	Sec. 11, 121	Theft; Fraud.
22-3702	Issue of receipt containing false statement.	Sec. 111, 121	Theft; Fraud.
22-3703	Issue of duplicate receipts not so marked.	Sec. 111, 121	Theft; Fraud.
22-3704	Issue of receipt that does not state warehouseman's ownership of goods.	Sec. 111, 121	Theft; Fraud
22-3705	Delivery of goods without obtaining negotiable receipts.	Sec. 111, 121	Theft; Fraud.
22-3706	Negotiation of receipt for mortgaged goods.	Sec. 111, 121	Theft; Fraud.
23-314	Joinder of inconsistent offenses concerning the same property.	None.	

Chart B: D.C. CODE STATUTES RELATING TO THEFT AND WHITE COLLAR CRIME WHICH ARE NOT EFFECTED BY BILL NO. 4-133

Code Section	Section Heading
22-704	Corrupt influence.
22-1302	Recordation of deed, contract or conveyance with intent to extort money.
22-1303	False personation before court, officers, or notaries.
22-1304	Falsely impersonating public officer or minister.
22-1305	False personation of inspector of departments of District.
22-1306	False personation of police officer.
22-1402	Forging or imitation brands or packaging of goods.
22- 1410	Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; "credit" defined.
22-1411	Fraudulent advertising.
22-1412	Prosecution under §22-1411.
22-1413	Penalty under §22-1411.
22-1414	Fraudulent interference or collusion in jury selection.

Section 601: AMENDMENTS

Section 601 of the bill sets forth amendments which conform certain existing statutes to the provisions contained in Bill No. 4-133. For the most part, the amendments are stylistic and only change the terminology used in the statute in order to make it consistent with the terminology used in the bill. The amendments are described below.

Subsection (a)

Subsection (a) amends D.C. Code, section 16-708 which sets forth penalties for the wrongful conversion of forfeitures and fines. The statute provides that an agent who wrongfully converts any money as provided in D.C. Code, section 16-704(a) or 16-707(a) shall be guilty of embezzlement and shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both. The amendment offered in this section changes the term "embezzlement" to "theft". Under Bill No. 4-133, the offense of embezzlement has been consolidated into the general theft provision defined in section 111 of the bill. As such, the language of the current statute has been changed to conform to the terminology used in the bill.

The penalty provision of D.C. Code, section 16-708 has also been amended. The penalties for theft under the bill have been substituted for the penalties currently authorized. The penalties for theft as set forth in section 112 of the bill, are: (1) a fine of up to $5,000 or imprisonment for up to 10 years, or both, if the value of the property is $250 or more; and (2) a fine of up to $1,000 or imprisonment for up to 1 year, or both, if the value of the property is less than $250. The current penalties are limited to a fine of up to $5,000 or imprisonment for 5 years or both.

Subsection (b)

Subsection (b) amends D.C. Code, section 22-101 which defines the terms "writing" and "paper". These definitions have been modified to provide

for the alternative definition of "written instrument" that appears in the forgery section of the bill (section 141).

Subsection (c)

Subsection (c) amends D.C. Code, section 22-102 which defines the term "anything of value" as including not only things possessing intrinsic value, but other writings which represent value. The proposed amendment has the effect of applying this definition to the provisions of Bill 4-133

Subsection (d)

Subsection (d) amends D.C. Code, section 22-3106 which prohibits stealing or defacing books, manuscripts, publications and works of art. The amendment strikes the word "steal" from the statute. The amendment has the effect of repealing that portion of the statute which prohibits stealing the various items enumerated in the statute. This conduct is prohibited by the consolidated theft provision contained in section 111 of the bill. Consequently, retention of this part of the statute would be redundant. The second offense currently contained in the statute, that of destroying or injuring the listed items, is not effected by the amendment and remains intact.

Subsection (e)

Subsection (e) amends the definitions section of the weapons chapter of the D.C. Code. The amendment strikes the word "larceny" from the list of crimes of violence set forth in D.C. Code, section 22-3201 and referenced in D.C. Code, section 22-3202. The term "larceny" has not been replaced with the term "theft" because in this context the substitute language would unnecessarily broaden the scope of the term 'crime of violence' beyond its intended meaning. Theft, under the bill includes the offense previously known as embezzlement, false pretenses and theft by use of slugs as well as a multitude of other

theft-related offenses which have never been considered to be crimes of violence.

Subsection (f)

Subsection (f) amends D.C. Code, section 23-546(c) which relates to applications for authorization or approval of interception of wire or oral communications. Subsection (c) of this statute lists the crimes for which interception of wire or oral communications may be authorized. This amendment makes four changes to the wiretap statute. The first change deletes references to those statutes which have been repealed by Bill 4-133 from the listed crimes and statutes, and replaces them with the corresponding references to the provisions of Bill 4-133. For example, one of the listed crimes for which a wire tap may be currently authorized is obstruction of justice under D.C. Code, section 22-703. This statute has been repealed by Bill 4-133 and replaced by the obstruction of justice section contained in section 502 of the bill. The amendment reflects this change.

The second change deletes a reference made in the wiretap statute to another statute which is repealed by the bill. The repealed statute, D.C. Code section 22-702, which relates to offering or receiving money, property or valuable consideration to procure office or promotion from the Council. This statute is repealed by section 602(c) of the bill and consequently the reference to this statute has been removed from the wire tap statute.

The third change amends the wiretap statute to conform to recent changes in the District's drug laws. Subsection (c)(A) of D.C. Code, section 23-546 provides for wire tap and interception of oral communications for acts prescribed by the Uniform Narcotic Drug Act and the Dangerous Drug Act for the District of Columbia. Both of those laws were replaced by the District of Columbia Uniform Controlled Substances Act of 1981 which became law on August 5, 1981. The amendment deletes the reference to the repealed laws and substitutes language which reflects the enactment of the new uniform

controlled substances law.

Subsection (g)

Subsection (g) amends D.C. Code, section 23-581 which sets forth the conditions a law enforcement officer is authorized to make an arrest without a warrant. Paragraph (2) of the current statute lists the offenses for which warrentless arrests may be made. This list makes reference to several statutes which are repealed by Bill 4-133. The amendment deletes the references to the repealed statutes and substitutes references to the provisions as in Bill 4-133 which replace the repealed statutes.

Subsection (h)

Subsection (h) amends D.C. Code, section 26-420 which relates to misapplication of funds entrusted to a bank, loan, mortgage, safe deposit or title company. The statute provides that such misapplication constitutes 'larceny' and shall be punished as provided by the laws of the District. The amendment substitutes the term "theft" for the term "larceny" since the offense of larceny has been included in the comprehensive theft provision contained in section 111 of Bill 4-133.

Subsection (i)

Subsection (i) amends that portion of D.C. Code, section 26-504(c) which relates to misappropriation of funds by a building or loan association. The statute provides that such conduct constitutes "larceny" and is punishable as such. As previously noted, the offense of larceny is included within the consolidated theft provision of Bill 4-133. The amendment deletes the reference to "larceny" and substitutes the term "theft" to conform the

language used in this statute with the language used in Bill 4-133.

Section 602: Repealers

Section 602 of Bill No. 4-133 sets forth those statutes which are to be repealed by the bill. The repealed statutes are described below:

Subsection (a)

Subsection (a) repeals D.C. Code, section 23-314 which relates to joinder in an indictment or information of inconsistent offenses concerning the same property. This statute is no longer necessary because the theft provision of Bill 4-133 consolidates the offenses previously known as larceny, embezzlement and false pretenses as well as other theft related offenses.

Subsection (b)

Subsection (b) repeals the current bribery statute contained in D.C. Code, section 22-701. This statute is replaced by the new bribery of a public servant and bribery of a witness provisions contained in Sections 302 and 303 of Bill 4-133. These new provisions redefine the offense of bribery and supercede the current statute.

Subsection (c)

Subsection (c) repeals D.C. Code, section 22-702 which prohibits offering or receiving money, property or valuable consideration to procure an office or promotion from the District of Columbia Commissioners. Corrupt instances of such activity are prohibited by the bribery provision (section 302) of the bill and consequently, this statute is repealed.

Subsection (d)

Subsection (d) repeals D.C. Code, section 22-703, the current obstruction of justice statute. This statute is replaced by the new obstruction of justice provision contained in section 502 of Bill 4-133.

Subsection (e)

Subsection (e) of this section repeals D.C. Code, section 22-1201 which prohibits embezzlement of property belonging to the District of Columbia. This statute is replaced by the general theft provison contained in section 111 of Bill 4-133 which prohibits all forms of embezzlement.

Subsection (f)

Subsection (f) of this section repeals D.C. Code, section 22-1202 which prohibits embezzlement by an agent, attorney, clerk, servant, or agent of a corporation. This statute is replaced by the comprehensive theft offense contained in section 111 of this bill, which encompasses all forms of embezzlement.

Subsection (g)

Subsection (g) of this section repeals D.C. Code, section 22-1203 which relates to embezzlement of a note not delivered. The general theft provision contained in section 111 of Bill 4-133 prohibits all forms of embezzlement and supercedes this narrowly drawn statute.

Subsection (h)

Subsection (h) repeals D.C. Code, section 22-1204, which prohibits receiving embezzled property. This conduct is prohibited by the receiving stolen property provision contained in section 132 of Bill 4-133. The definition section of the bill, section 101(6), specifically includes embezzled property within the meaning of stolen property for the purposes of the bill. In certain cases, the offense described in this current

may also be prosecuted as trafficking in stolen property in accordance with section 131 of the bill. Since the provisions of this statute have been superceded by the provisions of Bill 4-133, this statute has been repealed.

Subsection (i)

Subsection (i) of this section repeals D.C. Code, section 22-1205 which prohibits embezzlement by carriers and innkeepers. The consolidated theft provision of Bill 4-133 prohibits all forms of embezzlement and supercedes this narrowly drawn statute.

Subsection (j)

Subsection (j) of this section repeals D.C. Code, section 22-1206 which prohibits embezzlement by warehousemen and factors. As previously noted, embezzlement is one of the offenses which has been consolidated into the general theft provision of Bill 4-133. Thus, this statute is replaced by the new theft provision.

Subsection (k)

Subsection (k) repeals D.C. Code, section 22-1207 which sets forth the penalties for certain embezzlement offenses when the value of the embezzled property is less than $100. As noted, the offense of embezzlement is consolidated into the comprehensive theft provision of Bill 4-133. Under section 112(b) of the bill, the penalty for theft is a fine of up to $1,000 or imprisonment of up to 1 year, or both, if the value of the property is less than $250. The revised penalty provisions of the bill replace D.C. Code, section 22-1207.

Subsection (l)

Subsection (l) of this section repeals D.C. Code, section 22-1208 which prohibits conversion by a commission merchant, consignee, person selling goods on commission and auctioneers. All forms of conversion are consolidated into the general theft provision contained in section 111 of Bill 4-133, which replaces this statute.

Subsection (m)

Subsection (m) of this section repeals D.C. Code, section 22-1209 which prohibits embezzlement by a mortgagor of personal property in possession. The general theft provision of Bill 4-133 prohibits all forms of embezzlement and thus supercedes this statute.

Subsection (n)

Subsection (n) of this section repeals D.C. Code, section 22-1210 which prohibits embezzlement by executors and other fiduciaries. The conduct prohibited by this statute is included as part of consolidated theft offenses contained in section 111 and Bill 4-133 and is replaced by that section.

Subsection (o)

Subsection (o) of this section repeals D.C. Code, section 22-1211 which defines the offense of taking property without right. This statute is restated in section 116 of Bill 4-133 and is superceded by the provisions of that section.

Subsection (p)

Subsection (p) of this section repeals D.C. Code, section 22-1301 which defines the offense of false pretenses. This offense has been included in the consolidated theft provision of Bill 4-133. The conduct prohibited by this statute may also be in violation of the fraud

provisions of the bill if the evidence demonstrates a scheme to defraud. Subsection (c) of the current statute, which relates to false registration at a hotel or motel with intent to defraud, is substantially reenacted by section 124 of the Bill 4-133.

Subsection (q)

Subsection (q) of this section repeals D.C. Code, section 22-1307 which prohibits a person who is not a member of certain organizations, such as the Grand Army of the Republic and the United Spanish War Veterans, from wearing or using the insignia, of those organizations in order to obtain "aid or assistance". The statute also prohibits non-members from wearing such a badge or insignia when not entitled to do so under the organization's rules of order. Under Bill No. 4-133, if a person solicits money by means of false pretense or representation, which may involve presenting a badge or indentification card from an organization of which the person is not a member, the conduct may be penalized under the theft and fraud provisions of the bill. Because this conduct is adequately covered by the new, more comprehensive provisions of the bill, this statute has been repealed.

Subsection (r)

Subsection (r) of this section repeals D.C. Code, section 22-1308, which prohibits notary publics, and other officers authorized to take proof or acknowledgement of an instrument from wilfully making a false certification of acknowledgement. The conduct prohibited by this statute has been included as part of the perjury section, section 401(a)(2), of Bill 4-133 and is replaced by that section.

Subsection (s)

Subsection (s) of this section repeals D.C. Code, section 22-1401 which prohibits forgery. Section 141 of Bill 4-133 redefines the offense of forgery and thus replaces this statute.

Subsection (t)

Subsection (t) of this bill repeals D.C. Code, section 22-1404 which prohibits fraudulently making away with, secreting or converting any property, documents or assets belonging to the estate of a deceased person. This conduct is prohibited by the consolidated theft provision of Bill 4-133. Moreover, if a scheme to defraud is involved, this conduct is also prohibited by the fraud statute of this bill. Consequently, the provisions of this statute are superceded by the provisions of Bill 4-133.

Subsection (u)

Subsection (u) of this section repeals D.C. Code, section 22-1405 which prohibits taking away or concealing any writing whereby an estate or right of another may be defeated, injured or altered, if such conduct is committed with intent to defraud or to injure another person. This conduct is prohibited by the theft and fraud provisions of Bill 4-133, which supercede this statute.

Subsection (v)

Subsection (v) of this section repeals D.C. Code, section 22-1407 which prohibits fraud by use of slugs to operate a coin-operated mechanism. This conduct is prohibited by the more general theft and fraud provisions of Bill 4-133,which supercede this statute.

Subsection (w)

Subsection (w) of this section repeals D.C. Code, section 22-1408, which prohibits manufacturing, selling, offering for sale or possessing slugs with intent to defraud. This conduct is prohibited by the more general theft and fraud provisions of Bill 4-133, which supercede this statute.

Subsection (x)

Subsection (x) of this section repeals D.C. Code, section 22-1409. This statute defines the term "persons" for the purposes of the two statutes described above, D.C. Code, sections 22-1407 and 22-1408. Since both of those

statutes have been repealed by Bill 4-133, this statute serves no purpose and is repealed as a technical matter.

Subsection (y)

Subsection (y) of this section repeals D.C. Code, section 22-2201, the current grand larceny statute. Since grand larceny is one of the offenses which is consolidated into the general theft provision contained in section 111 of Bill 4-133, this statute is superceded by the bill.

Subsection (z)

Subsection (z) of this section repeals D.C. Code, section 22-2202, the petit larceny statute. Since petit larceny is one of the offenses which is consolidated into the general theft provision of Bill 4-133, this statute is superceded by the bill.

Subsection (aa)

Subsection (aa) of this section repeals D.C. Code, section 22-2203 the current larceny after trust statute. This form of larceny has been consolidated into the general theft offense provision contained in section 111 of this bill.

Subsection (bb)

Subsection (bb) of this section repeals D.C. Code, section 22-2204 which is the current unauthorized use of vehicle statute. This statute is basically reenacted by section 115 of Bill 4-133.

Subsection (cc)

Subsection (cc) of this section repeals D.C. Code, section 22-2204a which prohibits theft from vehicles. Theft offenses are consolidated in section 111 of Bill 4-133 and as a result, this statute is repealed.

Subsection (dd)

Subsection (dd) of this section repeals D.C. Code, section 22-2205 which prohibits receiving stolen goods. This statute has been replaced by section 132 of Bill 4-133, entitled Receiving Stolen Property. To a certain extent, this statute is also superceded by the new offense of Trafficking in Stolen Property contained in section 131 of the bill.

Subsection (ee)

Subsection (ee) of this section repeals D.C. Code, section 22-2206 which prohibits stealing property of the District of Columbia. This limited form of theft is covered by the general theft provision contained in section 111 of Bill 4-133 and is superceded by that provision.

Subsection (ff)

Subsection (ff) of this section repeals D.C. Code, section 22-2207, which prohibits receiving property stolen from the District of Columbia. The offense of receiving any stolen property is redefined by section 132 of Bill 4-133, which replaces the current statute.

Subsection (gg)

Subsection (gg) of this section repeals D.C. Code, section 22-2208 which prohibits destroying property of a value of $100 or more which has been stolen. Destroying tangible physical evidence with intent to impair its availability at an official proceeding is prohibited by section 503 of the bill. In addition, section 132 prohibits obtaining control over, possessing, receiving or buying stolen property. Since both these provisions of the bill adequately prohibit the conduct sought to be restricted by this statute, the statute has been repealed.

Subsection (hh)

Subsection (hh) of this section repeals D.C. Code, section 22-2301, the criminal libel statute. Repeal of this statute was recommended by the

D.C. Law Revision Commission so as to remove criminal penalties for activity which has traditionally been treated as tortious rather than criminal. As noted in testimony presented on behalf of the American Civil Liberties Union:

> Not only are civil damanges an adequate remedy for injury to the public interest or to private right caused by libelous material, but criminal penalties are particularly harmful in an area so intimately involved with political activity...where free expression deserves its widest possible scope.

Because this type of activity is adequately redressed by civil remedies, this statute and the accompanying criminal libel statutes (D.C. Code, sections 22-2302, 22-2303 and 22-2304) discussed below are repealed.

Subsection (ii)

Subsection (ii) of this section repeals D.C. Code, section 22-2302 which provides that knowingly sending or delivering a libelous communication to the party libeled is sufficient publication to subject the party delivering the communication to the same penalty as that provided for criminal libel. As previously noted, this conduct is adequately addressed by civil sanctions and thus, the statute is eliminiated from the criminal code.

Subsection (jj)

Subsection (jj) of this section repeals D.C. Code, section 22-2303, which provides a defense to criminal libel. Because the criminal libel statutes are repealed by subsections (hh) and (ii) of this section, this statute is no longer necessary and is repealed.

Subsection (kk)

Subsection (kk) of this section repeals D.C. Code, section 22-2304, which relates to false charges of unchasity. This statute provides criminal penalties for a form of libel. Since this conduct is adequately addressed by civil law and the statute is deleted from the criminal code.

Subsection (ll)

Subsection (ll) of this section repeals D.C. Code, section 22-2305, the current blackmail statute. This statute is superceded by section 152 of Bill 4-133 which redefines the offense of blackmail.

Subsection (mm)

Subsection (mm) of this section repeals D.C. Code, section 22-2306. This statute prohibits transmitting any communication containing illegal threats or demands with the intent to commit extortion. The offense of extortion is redefined by section 151 of Bill 4-133 which supercedes this statute.

Subsection (nn)

Subsection (nn) of this section repeals D.C. Code, section 22-2501 which relates to perjury and subornation of perjury. As to perjury, section 401(a)(1) of the bill basically reenacts the traditional offense of perjury which is currently codified in D.C. Code, section 22-2501. Consequently, retention of the statute would be duplicative. Subornation of perjury is not defined in the current criminal code, but by virtue of D.C. Code, section 22-2501 is punished the same as perjury. Section 402 of this bill defines the offense of subornation of perjury and provides a penalty provision.

Subsection (oo)

Subsection (oo) of this section repeals D.C. Code, section 22-2602, relating to misprisons by officers or employees of the District of Columbia jail. This statute prohibits jail employees and officers from accepting bribes for certain purposes. This conduct is prohibited by section 302 of this Bill 4-133 which defines bribery and supercedes the current statute.

Subsection (pp)

Subsection (pp) of this section repeals D.C. Code, section 22-3115 which prohibits offenses against the property of electric lighting, heating, or power companies. The prohibited conduct includes connecting or disconnecting an electrical conductor, tampering with a meter or other apparatus and interfering with the operation of any dynamo or other electricial appliance owned by such a company. Under Bill 4-133, theft of services, including theft of public utility services, is prohibited by the general theft provision contained in section 111. Thus, if the acts prohibited by this statute were committed in order to obtain services without payment, section 111 applies. The offense of fraud as defined in section 121 of Bill 4-133 might also be applicable. Lastly, if the acts were committed to maliciously break injure or destroy the company's property, this conduct is prohibited by D.C. Code, section 22-403 relating to destruction of property. Consequently, the current statute is repealed by Bill 4-133.

Subsection (qq)

Subsection (qq) of this section repeals D.C. Code, section 22-3116 which prohibits tapping gas pipes. Similar to the repealer in subsection (pp), the conduct prohibited by this statute is addressed by the theft and fraud provisions of Bill 4-133 and, in certain instances by the destruction

of property statute of D.C. Code, section 22-403. Consequently, the specific statute prohibiting tapping gas pipes is repealed by Bill 4-133.

Subsection (rr)

Subsection (rr) of this section repeals D.C. Code, section 22-3117, which relates to tapping or injuring water pipes and tampering with water meters. Under Bill 4-133, wrongfully obtaining services by tampering would be punishable as theft under section 111 of the bill. Services include water services. Thus, as with other narrowly drawn statutes prohibiting certain conduct against the property or electric of gas utilities, this statute is superceded by the provisions of Bill 4-133. (See subsections (pp) and (qq) of this section.).

Subsection (ss)

Subsection (ss) of this section repeals D.C. Code, section 22-3404, which prohibits mislabeling meat which is not kosher as kosher meat. This conduct would amount to a fales representation or pretense and is prohibited by the general fraud provision contained in section 121 of Bill 4-133. Consequently, the current, more narrowly drawn statute on mislabeling kosher meats is repealed. The conduct prohibited by this current statute may also be violation of D.C. Code, section 22-1411 which prohibits false advertising and which is not repealed by Bill 4-133.

Subsection (tt)

Subsection (tt) of this section repeals D.C. Code, section 22-3405 which provides definitions for terms used in the kosher meats statute, D.C. Code, section 22-3404. Because the kosher meats statute is repealed by subsection (ss) of this section, these definitions are no longer necessary and are removed as technical matter.

Subsection (uu)

Subsection (uu) of this section repeals D.C. Code, section 22-3406 which provides penalties for violations of the kosher meats statute, D.C. Code, section 22-3404. Because the kosher meats statute is repealed by subsection (ss) of this section, this statute is also repealed as a technical matter.

Subsection (vv)

Subsection (vv) of this section repeals D.C. Code, section 22-3409 which relates to mislabeling potatoes. As with the offense of mislabeling kosher meats, this conduct would be penalized under the fraud provisions of Bill 4-133 and would also be prohibited by the false advertising statute, D.C. Code, section 22-1401, that is not repealed by this bill.

Subsection (ww)

Subsection (ww) of this section repeals D.C. Code, section 22-3410, which relates to the type of label required to be displayed on packages of potatoes for the purpose of the misleabeling of potatoes statute, D.C. Code, section 22-3409. Since the mislabeled potatoes statute is repealed by subsection (vv) of this section, this statute is also repealed as a technical matter.

Subsection (xx)

Subsection (xx) of this section repeals D.C. Code, section 22-3411 which excepts certain potatoes from the mislabeling of potatoes statute. This exception is no longer necessary due to the repeal of the mislabeling of potatoes statute and is eliminated as a technical matter.

Subsection (yy)

Subsection (yy) of this section repeals D.C. Code, section 22-3412 which provides penalties for mislabeling potatoes. Since the mislabeling potatoes statute is repealed by subsection (vv) of this section, this statute is also repealed as a technical matter.

Subsection (zz)

Subsection (zz) of this section repeals D.C. Code, section 22-3413 which prohibits procuring the enlistment of criminals into the military or naval service of the United States. At one time, particularly during the civil war, it was an accepted practice for a person who was drafted to arrange for another person to serve in the armed forces in his place. The current statute, D.C. Code section 22-3413 acts to bar procurement of a criminal as a subtittute. However, this statute is not necessary since the armed services no longer accept substitute services by another.

Subsection (aaa)

Subsection (aaa) of this section repeals D.C. Code, section 22-3701, which prohibits a warehouseman from issuing a receipt for goods not actually received. The conduct is prohibited by the fraud provisions of Bill 4-133, if it is committed as part of a scheme to defraud.

Subsection (bbb)

Subsection (bbb) of this section repeals another of the warehouse receipts statutes, D.C. Code, section 22-3702, which prohibits the fraudulent issuance of a warehouse receipt containing a false statement. The fraud provisions of Bill 4-133, contained in section 121, prohibit this type of activity and supercede the current statute.

Subsection (ccc)

Subsection (ccc) of this section repeals D.C. Code, section 22-3703 which prohibits the issuance of duplicate warehouse receipts that are not so marked. This conduct is also prohibited by the fraud provisions of Bill 4-133, which supercede the current statute.

Subsection (ddd)

Subsection (ddd) of this section repeals D.C. Code, section 22-3704 which prohibits the issuance of a warehouse receipt that does not state the warehouseman's ownership of the goods. If this conduct is committed as part of a scheme to defraud, it is prohibited by the fraud provisions of Bill 4-133, which supercede the current statute.

Subsection (eee)

Subsection (eee) of this section repeals D.C. Code, section 22-3705 which prohibits delivery of goods without obtaining negotiable receipts. The fraud provisions of Bill 4-133 contained in section 121, prohibit this activity if committed as part of a scheme to defraud.

Subsection (fff)

Subsection (fff) of this section repeals D.C. Code, section 22-3706 which relates to negotiation of a receipt for mortgaged goods. As is the case with the other warehouse receipts statutes contained in Chapter 37 of Title 22 of the D.C. Code, this statute is superceded by the fraud provisions of this bill.

TITLE VI. APPLICABILITY AND EFFECTIVE DATE

Title VII establishes the applicability of this bill and sets forth its effective date.

Subsection (a) of section 701 governs the applicability of this bill. It provides that the provisions of the bill apply only to offenses committed on or after the effective date of the bill. The section further provides that the provisions of the bill apply only if all the elements of the offense occur on or after the effective date of the bill. If any of the elements of the offense occur prior to the bill's effective date, the offense is not governed by the provisions of the bill. Instead, it is governed by the preexisting law, which is deemed to remain in effect for the purpose of prosecutions of offenses committed prior to the effective date of Bill 4-133. This applicability provisions serves two functions. First, the provision is intended to insure that the bill will not be applied retroactively. Second, the provision is intended to insure that prosecutions of offenses committed in whole or in part before the effective date of this bill will not abate.

As to the first purpose, it is clear that penal laws may only apply prospectively, in accordance with the United States Constitution, Article 1, sections 9 and 10. In terms of substantive criminal laws, it is well established that the legislature may not pass an ex post facto law which operates retroactively in creating a crime or increasing the punishment for a crime.[141/] There are a number of provisions contained in Bill 4-133 which are new to District of Columbia law and which "make an action done

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141/ Calder v. Bull, 3 U.S. (3 Dall.) 385, 390 (1798); Duncan v. Missouri, 152 U.S. 377 (1894); Weaver v. Graham, 101 S.Ct. 960 (1981).

before the passing of the law, and which was innocent when done, criminal and punishes it".[142/] There are also several provisions in the bill which have the effect of increasing the penalties for particular offenses. An example is the enhanced penalty for crimes committed against senior citizens. These provisions would be constitutionally infirm if applied retroactively.[143/] The requirement of section 1701(a) that the provisions of the bill be applied prospectively avoids the difficulty of determining whether a particular provision would be ex post facto if applied retroactively.

This subsection also provides that offenses which occur prior to the effective date of the bill (re) be governed by prior law which will remain in effect for the purpose of prosecuting such crimes. Thus, for example, if a person commits a grand larceny prior to the effective date of this bill, but is charged and tried after the effective date, the person will be charged and tried under the grand larceny statute contained in D.C. Code, section 22-2201. That statute will remain in effect for the purposes of such a prosecution, even though it is repealed by section 602(y) of this bill. Thus, the applicability provision is intended to provide a method of transition from the prior law to this bill which is calculated to insure that all prosecutions continue without abatement.

Subsection (b) of section 701 sets forth the effective date of this bill. As criminal law legislation, the bill is governed by section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act.

142/ United States v. Henson, 486 F.2d 1292, 1305 (D.C. Cir. 1975) appeal aff'd on remand, 511 F.2d 1308 (D.C. Cir. 1973; Mallory v. South Carolina, 237 U.S. 180 (1915).

143/ Re Medley, 134 U.S. 160 (1889); United States v. Henson, 486 F.2d at 1305.

DC LAW 4-164

Council of the District of Columbia
Report

RECEIVED

The District Building 14th and E Streets, N.W. 20004 First Floor [illegible] 724-8000

To MEMBERS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

From David A. Clarke, Chairperson, Committee on the Judiciary

Date June 1, 1982

Subject Bill No. 4-133, the "District of Columbia Theft and White Collar Crimes Act of 1982"

The Committee on the Judiciary, to which this bill was referred, reports favorably on the bill as an amendment in the nature of a substitute and recomends its passage by the Council of the District of Columbia.

PURPOSE

The overall purpose of Bill No. 4-133 is to revise and modernize the District of Columbia criminal laws relating to theft, receipt of stolen property, fraud, extortion, blackmail, forgery, bribery, perjury, libel and obstruction of justice. The revision is designed to meet four objectives: (1) to consolidate and clarify the law; (2) to promote more effective law enforcement by removing anachronisms and unnecessary technical statutory and common law distinctions which have hampered law enforcement; (3) to modernize the law so that it adequately addresses new public safety concerns and needs; and (4) to identify and proscribe harmful activity which is not currently prohibited by the District's criminal law. Major features of the bill include:

(1) a comprehensive theft provision that consolidates the numerous theft offenses which are currently scattered throughout the criminal code;

(2) a provision which permits the value of items stolen as part of a single scheme to be aggregated for the purpose of prosecuting the offense as a felony rather than as mutiple misdemeanors;

(3) an enhanced penalty for those who [illegible]al from senior citizens whether by robbery, theft, extortion or fraud;

(4) a new provision which prohibits commercial piracy of sound recordings and other types of proprietary information such as computer programs and formulas;

(5) a provision which defines the offense of shoplifting as a separate offense and clarifies the civil liabilities of shopkeepers who detain suspected offenders;

(6) provisions which redefine the offenses of extortion and blackmail;

(7) a new provision which prohibits trafficking in stolen property;

(8) new provisions which prohibit schemes to defraud and credit card fraud;

(9) a provision which clarifies the offense of forgery and provides for graded penalties based upon the nature and value of the forged instrument;

(10) a redefinition of the crimes of extortion and blackmail;

(11) a provision which redefines the offense of bribery;

(12) a provision which consolidates and redefines perjury offenses; and

(13) new provisions which prohibit making false statements and false swearing;

(14) provisions which redefine the offense of obstruction of justice and prohibit tampering with evidence.

In addition, the bill eliminates several statutes from the criminal code which prohibit conduct that is either prohibited by other sections of the criminal code or is actionable under civil law. Consequently, statutes relating to criminal libel, mislabeling of foods, and procuring the enlistment of criminals, are repealed.

LEGISLATIVE HISTORY

Bill No. 4-133 was introduced on February 12, 1981, by Councilmember David A. Clarke together with Councilmembers Rolark, Mason and Shackleton. Formulation of this legislation began in 1980 following a series of eight public hearings on criminal law reform. The subject of the 1980 hearings was a proposal developed by the D.C. Law Revision Commission, which had been introduced before the Council of the District of Columbia as Bill No. 3-226, the "District of Columbia Basic Criminal Code Act of 1979." Chapters 9 and 10 of the proposal recommended reform of the District's law relating to theft, extortion, fraud and forgery. Comments on these chapters of the proposal were received from over 15 witnesses, including representatives of the Metropolitan Police Department, the Office of the Corporation Counsel, the Office of Consumer Protection and Division V of the District of Columbia Bar. While there was a difference of opinion as to the substantive provisions contained in the proposal, it was generally agreed that this area of the law was in great need of reform. Although the basic proposal developed by the D.C. Law Revision Commission did not address other white collar crimes, such as bribery, perjury and obstruction of justice, the testimony received by the Committee on the Judiciary during the 1980 hearings emphasized the need for reform of these laws as

well. Based upon this testimony, the Committee on the Judiciary identified theft and white collar crime as an area in which legislative action was necessary.1/ Bill No. 4-133 was introduced to meet this need.

Following introduction, Bill No. 4-133 became the subject of two public hearings held on March 12 and 13, 1981. Comments on the bill were received from:

Mr. Charles F.C. Ruff, then United States Attorney for the District of Columbia;
Ms. Judith Rogers, Corporation Counsel, representing the Executive Branch;
Division V of the District of Columbia Bar;
National Conference of Black Lawyers;
The Board of Trade;
The National Association of Recording Merchandisers, Inc.;
The American Civil Liberties Union;
The Washington Urban League;
Americans for Democratic Action;
The Gertrude Stein Club;
The Eighteenth and Columbia Road Business Association;
Federation of Citizens Associations of the District of Columbia;
Capital Hill Citizens Association;
Third District Citizens Advisory Council;
Business and Professional Association of Georgetown;
The North Portal Civic League;
Mr. Charles Black, Concerned Citizen, and
Mr. Dino Drudi, Concerned Citizen.

Bill No. 4-133 was presented before the Committee on the Judiciary for mark-up on June 1, 1982, as an amendment in the nature of a substitute. The amended version of the bill reflects many of the comments received during the 1981 public hearings which recommended revisions to afford greater consolidation and clarity.

CAPSULE LEGISLATIVE HISTORY

Bill No. 3-226 introduced (containing provisions on theft, fraud, extortion and forgery)	November 20, 1979
Public Hearings on Bill No. 3-266	January 10, 24; February 7, 12; March 6, 20; and April 3, 17, 1980

1/See, Interim Report -- Criminal Law Reform, Committee on the Judiciary June 11, 1980.

Bill No. 4-133 introduced	February 12, 1981
Notice published in the D.C. Register	February 20, 1981
Public Hearings on Bill No. 4-133	March 12, and 13, 1981
Committee Mark-up and Report	June 1, 1982

NEED FOR THE LEGISLATION

> The present criminal law of the District of Columbia is an outdated relic of mosaic statutes, cases and administrative interpretations passed into law, in a piecemeal fashion, over a period of time that stretches from 1901 to the present.2/

In no instance is the above statement more true than as applied to the body of law governing theft and white collar crimes. Currently, the District of Columbia Code lacks a uniform body of law addressing these crimes and instead uses a patchwork approach consisting of more than seventy-five statutes located in more than nine different chapters. In its current state, the code presents several basic problems. First, it fails to adequately address current public safety concerns. For example, although consumer fraud and other types of frauds pose serious problems, the code does not contain a generalized statute which prohibits schemes to defraud. Nor does the code adequately address the offense of dealing in stolen property, although it is recognized that this crime has a direct relationship to the rise in burglaries and other offenses involving theft. Second, the code fails to take into account changes in society which have developed over time. Many of the statutes governing this area of the law were enacted in 1901 and have not been reviewed or revised since that time. Advances in science and technology have now made it possible to commit crimes by methods never contemplated at the time the statutes were enacted. As a result, it is often unclear whether certain conduct is prohibited or falls outside the realm of the current criminal law. A third problem posed by the current code is that it is replete with unnecessary technical distinctions which only serve to hamper law enforcement efforts. This is a particular problem with the theft statutes. Lastly, the code contains many statutes which overlap and prohibit essentially the same conduct. The redundancy is unnecessary and serves only to create confusion.

2/ Thomas Eagleton, Chairman, Senate Subcommittee on Governmental Efficiency, and Romano Mazzoli, Chairman, House Subcommittee on Judiciary, Letter of Transmittal Transferring Jurisdiction of the Basic Criminal Code to the Council of the District of Columbia (December 5, 1978).

The problems posed by the current law were repeatedly emphasized during the 1980 and and 1981 public hearings on criminal law reform. Mr. Charles Ruff, then United States Attorney for the District of Columbia, summarized the problem as follows:

> One of the major gaps in the present D.C. Code is a comprehensive body of law governing white collar crime. We continue to struggle with theft statutes that are mired in common law concepts and artificial distinctions among offenses and with a false pretenses statute which frequently does not reach either consumer fraud or more complex financial schemes. Nor does present law deal adequately with offenses of public corruption and obstruction of justice -- principle concerns for any comprehensive enforcement system. The wide-ranging bill which you have introduced, Mr. Chairman, fills that gap.3/

Ms. Judith Rogers, Corporation Counsel for the District of Columbia, also stressed the need for revision of this area of law. In presenting the Executive Branch testimony concerning Bill No. 4-133, Ms. Rogers noted:

> The gap in the District of Columbia Code, caused by the absence of any or adequate provisions concerning various forms of theft, extortion, shoplifting, fraud, forgery and other crimes, has hampered effective law enforcement efforts on the local level.4/

The inadequacies of the current code are magnified when viewed in relation to the serious economic and societal costs of theft and white collar crimes. On the national level, it is estimated that the monetary cost of white collar crimes to society exceeds forty billion dollars per year. While there are no precise estimates available for the District of Columbia, it is recognized that white collar crimes, such as fraud, have a severe impact on the District's community. Likewise, economic losses due to shoplifting, bad checks and credit card fraud are substantial. A study conducted by the Metropolitan Board of Trade revealed that for the period between August 1980 and July 1981, metropolitan retailers suffered the following losses due to these three crimes alone:

Loss	Offense
$486,250,000	shoplifting
$ 24,125,000	bad checks
$ 5,200,000	credit card fraud

3/ Testimony before the Committee on the Judiciary, March 12, 1981.

4/ Testimony before the Committee on the Judiciary, March 12, 1981.

These reported losses are for retail stores only and do not include similar losses suffered by hotels, restaurants and other financial institutions. The losses are not, however, borne solely by the shopkeepers. The losses are in turn incurred by the public. It has been estimated that each adult in the metropolitan area will be charged an additional $300 per year for purchases in order to off-set the retailer's losses due to these three crimes.5/

Individual losses due to theft and related offenses are also exorbitant. Much of this property loss stems from burglaries. In calander year 1980, there were 16,260 burglaries committed in the District of Columbia.6/ It is recognized that much of the motivation behind committing burglaries is the desire to resell the property obtained. The fact that there are people willing to buy such property makes the crime of burglary far more profitable. Yet, the current provision of the criminal code relating to the receipt of stolen property has hampered undercover law enforcement operations aimed at identifying and arresting those who deal in stolen property. Bill 4-133 seeks to remove these obstacles.

In summary, your Committee finds that theft and fraud offenses have a substantial economic impact on the District of Columbia community. The current laws in this area fail to adequately address the serious problems posed by this type of crime. Therefore, your Committee further finds that Title I of this bill, which revises the offenses of theft, fraud, extortion and receipt of stolen property, is needed.

While theft and white collar crimes effects all segments of society, these crimes have a particularly devastating impact upon the elderly. Studies have generally shown that the elderly are especially vulnerable to two types of crimes -- fraud and purse-snatching.7/

A recent statement prepared by the National Retired Teachers Association and the American Association of Retired Persons sets forth some of the reasons why the elderly are particularly susceptible to fraud:

> First, a greater proportion of the elderly are more lonely and isolated than the case for younger persons. More than one-half of all women over 65 years or older are widowed. Con artists will often times exploit their loneliness or bereavement after the loss of a loved one. These schemes can take many forms --

5/ 1981 Anti-Crime Campaign Fact Sheet, The Greater Washington Board of Trade-Retail Bureau (1981).

6/ Crime and Arrest Profile: The Nation's Capital 1980, Office of Criminal Justice Plans and Analysis, D.C. Government (September 1981).

7/ Crime and the Elderly, Bureau of Justice Statistics, U.S. Department of Justice (1982); Crime Against the Elderly, Bureau of Justice Statistics, U.S. Department of Justice (1982); Forston, Raymond and Kitchens. Criminal Victimization of the Aged. North Texas State University, 1974.

lifetime dance lessons, computerized dating and lonely heart clubs. But, they usually cost the elderly dearly -- monetarily as well as psychologically.

Second, limited income in retirement may make older Americans vulnerable to "get-rich-quick" schemes, such as bogus land deals, worthless work-at-home schemes, fraudulent offerings in precious metals, and phony distributorships.

Third, failing health or fear of dying may make the elderly inviting targets for medical quackery cures and modern "medicine man" techniques.

Fourth, older persons have a tendency to be more trusting than people under 65. They were raised at a time when crime was not as serious a problem as it is now and in a less complex and more trusting society."8/

In terms of theft and related crimes, there are additional reasons why elderly victims of theft are distinctive.9/ First, many live on fixed, relatively low incomes and have little hope of recouping losses through future earnings. Thus, the economic impact of theft crimes is generally more severe upon elderly victims. Second, older people are more vulnerable and less able to defend themselves against robberies and theft involving physical contact because of weakened physical ability The elderly are also more susceptible to serious injury.10/ Third, older persons tend to be more vulnerable to robbery and street theft because many live in higher crime neighborhoods, and either cannot move because of limited income or do not wish to move from a neighborhood in which they have lived for a long time. In addition, many older people rely on public transportation or walking in order to get around the community, which makes the elderly somewhat more susceptible to street crime such as muggings and pickpocketing. Finally, the dates on which pension and other benefit checks are received are widely known, thus making it easier to calculate when the elderly are more likely to have cash available.

On the whole, while studies have shown that generally the elderly are not a highly victimized age group, there is a great fear of victimization among older people. One survey commissioned by the National Council on Aging showed that the

8/ Statement of the National Retired Teachers Association and the American Association of Retired Persons before the Subcommittee on Postal Personnel and Modernization of the House Committee on Post Office and Civil Service (May 20, 1982).

9/ See, McClure, Barbara, Crime Against the Elderly. Congressional Research Service (October 19, 1977).

10/ Midwest Research Institute, Crimes Against the Aging: Patterns and Prevention. Kansas City, Missouri (1977).

elderly ranked "fear of crime" as the most serious problem confronting them.11/ This fear may in turn become a form of victimization. For many older persons, the fear of crime has caused them to restrict their activities to a greater degree and it has been suggested that this diminished activity accounts in part for the lower victimization rates.12/ However, as noted by Mr. Henry McQuade of the Law Enforcement Adminitration in testimony before the House Select Committee on Aging:

> In the usual sense of the word, they (the elderly) may not be victimized, but such fragile safety exacts a high price by restricting their freedom to go about normal activities, as well as affecting their peace of mind.13/

Based upon these factors, your Committee finds that special protections for the elderly, such as the enhanced penalty for those who steal from senior citizens provided in Title II of this bill, are needed.

In addition, your Committee recognizes that white collar crimes affecting government processes also have a substantial impact on the community. Various types of fraud and corruption, involving deceit, misrepresentation and subterfuge, undermine the public's faith in our legal and political institutions. The District's criminal laws relating to bribery, perjury and obstruction of justice fail to adequately address the serious problems posed by these types of crime. Consequently, your Committee further finds that the revisions of these laws as contained in Titles III, IV and V of this bill to be necessary.

11/ Harris, Louis, The Myth and Reality of Aging in America. National Council on Aging. (1975)

12/ Goldsmith, J. and S. Goldsmith -- Crime and the Elderly: Challenge and Response. Lexington Books. (1976)

13/ Hearings on Elderly Crime Victimization Before the Subcommittee on Housing and Consumer Interests of the House Select Committee on Aging, 94th Congress, 2d Session (1976).

IMPACT ON EXISTING LAW

AND

SECTION-BY-SECTION ANALYSIS

Section 1 sets forth the short title of this bill as the "Distrtict of Columbia Theft and White Collar Crime Act of 1982."

Title I. -- Theft and Fraud Offenses.

SUBTITLE 1. General Provisions.

Section 101 sets forth definitions for terms that are used in Title I of this bill. The definitions are intended to apply in each instance that the term appears in the title, unless a different meaning is plainly required.

Paragraph (1) defines the term "appropriate". This definition applies to the consolidated theft provision (Section 111) and will be discussed in the context of that section.

Paragraph (2) defines the term "deprive". This definition applies to Section 111 (Theft) and Section 132 (Receiving Stolen Property) and will be discussed in the context of those provisions.

Pargaraph (3) defines the term "property" which is used throughout Title I. The term has been broadly defined as anything of value. This definition is intended to make clear that all forms of property are to be protected from unauthorized takings. The term "property" includes not only real property, tangible or intangible personal property, but also services and any other thing, substance or article having intrinsic or actual value.

Paragraph (4) defines the term "property of another". The term means any property in which another person or the government has an interest which the offender is not permitted to interfere with or infringe upon without consent, regardless of whether the offender also has an interest in the same property. The term is intended to include property of any individual, corporation, partnership, association or other legal entity. The term also covers property in which a government or any subdivision or instrumentality thereof, has an interest. Property belonging to a corporation or other legal entity established pursuant to an interstate compact, such as the Washington Metropolitan Area Transit Authority, is also included. The term "property of another" does not, however, include property which is in the possession of the offender in which another person only has a security interest, as defined in D.C. Code, sec. 28:1-207(37).

Paragraph (5) provides examples of what is meant by the term "services". The list provided is not an exclusive list and other types of services are intended to be covered.

Paragraph (6) provides that the term "stolen property" includes embezzled property. This provision has been added to make clear that the common law distinction between embezzled and stolen property is being abolished for the purposes of this bill.

Section 102 provides that if several items of property are stolen pursuant to a scheme or systematic course of conduct, whether from one person or several people, the values of those items may be added together for the purpose of determining the grade of the offense and the appropriate penalty. This section permits the cumulation of small amounts taken by a offender. Consequently, a person who systematically pilfers small amounts pursuant to a single scheme may be charged with a felony rather than with several misdemeanors.

Aggregation is permitted for the offenses of theft, fraud, and credit card fraud. In the case of credit card fraud, only amounts obtained within any consecutive 7-day period may be added together.

Section 103 prohibits the imposition of consecutive sentences in cases in which the same act of course or conduct violates both: (1) the theft and fraud provisions; (2) the theft and unauthorized use of motor vehicles provisions; and (3) the theft and commercial piracy provisions.

Nothing in this section is intended to prohibit the court from imposing concurrent sentences in such cases. In the case of conduct which violates both the theft and unauthorized use of vehicles sections, this provision carries forward the current law. However, as to the commercial piracy section and the general fraud provision, there is no exact precedent in current law because both offenses are new to District of Columbia law.

SUBTITLE 2. Theft Offenses.

Section 111 defines the offense of theft. This section consolidates the numerous theft offenses currently contained in the criminal code. There are currently more than thirty statutes in Title 22 of the District of Columbia criminal code which prohibit various forms of theft and fraud. The distinctions between the offenses are highly technical and have served only to confuse the charging process. Section 111 eliminates these distinctions from the law.

Under section 111, theft is defined as wrongfully obtaining or using the property of another with intent to: (1) appropriate the property to one's own use or to the use of a third person; or (2) deprive the other person of a right to the property or benefit of the property.

The phrase "wrongfully obtains or uses" constitutes the prohibited conduct. As defined in subsection (a), the term includes the following:

(1) "Taking and exercising control over property".

The language "taking control" addresses the typical larceny situation in which a person takes and carries away property of another. The language "exercises control" addresses the typical embezzlment situation.

2. "Making an unauthorized use, disposition or transfer of an interest in or possession of the property."

This language addresses the situation in which someone converts, conceals, or misappropriates another's property."

3. "Obtains property by trick, false pretense, false token, tampering or deception."

This language addresses situations which under current law are generally prosecuted as false pretenses, larceny by trick, or larceny after trust. The language also covers situations in which someone obtains property from vending machines or other equipment by the use of slugs or by tampering with the equipment. Conduct such as tapping gas pipes or adjusting electric meters in order to obtain services is also prohibited by this section.

Finally, section 111 provides that the term "obtains or uses" includes conduct previously known as larceny, larceny by trick, larceny after trust, embezzlement, and false pretenses. This language has been included to make clear that these crimes have been consolidated and that they are now to be treated as the single crime of theft.

As set forth in subsection (b), the above conduct must be done with specific intent to: (1) deprive another of the right to the property or a benefit of the property; or (2) appropriate the property to one's own use or to the use of a third person.

The term "deprive" is defined in Section 101(2) as an intent to withhold property or cause it to be withheld permanently or for so extended a time or under such circumstances as to acquire a substantial portion of its value. Deprive has also been defined as an intent to dispose of use or deal with the property so as to make it unlikely that the owner will recover it. As under current law, the intent to deprive does not have to be an intent to "permanently" deprive.

The term "appropriate", as defined in Section 101(1), means to take or make use of without right or authority. This language conveys the concept of an intent to use the property in a manner which is inconsistent with the rights of the owner or person in lawful possession.

The consolidated theft offense of Section 111 includes theft of services since the term "property" is specifically defined to include services. The offense of theft however, does not criminally sanction the misapplication of lost or mislaid property, conduct which is not an offense under the current law.

Subsection (c) provides that certain proof of theft of services shall be prima facie evidence that a person committed theft. This provision is drawn from the current law of false pretenses contained in D.C. Code, sec. 22-1301(b).

Section 112 sets forth the penalties for theft. If the value of the property obtained or used is $250 or more, the offense is a felony, punishable by a fine of up to $5,000 or imprisonment for up to 10 years, or both. If the value of the property is less than $250, the offense is a misdeameanor punishable by a fine of up to $1,000 or imprisonment for up to 1 year, or both.

The maximum penalties are generally consistent with current law although in certain instances the penalties set forth in this section represent an increase. For instance the current maximum felony penalty for false pretenses is imprisonment for up to 3 years. Under the section 112, this offense would be punishable by imprisonment for up to 10 years. The current threshold amount distinquishing between felony and misdemeanor theft offenses is $100. This threshold has been raised to $250. The increase reflects a change in economic standards since 1901, when most of the current penalties were established.

Section 113 creates a separate statutory offense of shoplifting. This offense is currently prosecuted as attempted larceny and punishable as a misdemeanor.

Subsection (a) defines the offense. The conduct prohibited by this provision is as follows:

(1) concealing or taking possession of property;

(2) removing or altering a price tag of other identification mark attached to or imprinted on the property; or

(3) transferring the property from one container to another.

This conduct must be committed with the intent to appropriate the property without complete payment or with intent to defraud. The conduct must be done knowingly, that is not be by mistake or inadvertance.

However, there is no requirement that the shoplifting be successful.

Subsection (b) sets forth the penalty for shoplifting as a fine of up to $300 or imprisonment for up to 90 days, or both. The penalty has been set in accordance with D.C. Code, sec. 16-705, so as to make the offense non-jury triable.

Subsection (c) provides that there can be no attempt to commit shoplifting since the offense, as defined, is an attempt to commit theft.

Subsection (d) protects shopowners from civil suits for defamation, malicious prosecution, false imprisonment, or detention for detaining a suspected shoplifter, provided that the detention was based upon probable cause and the manner and length of detention were reasonable. This provision in no way affects the criminal liability of the person detained.

Section 114 defines a new offense of commercial piracy. Subsection (a) provides definitions for this section. The terms defined include "owner", "proprietary information", and "phonorecord".

In accordance with subsection (b), This offense is committed when a person:

1. copies, possesses, buys or otherwise obtains copies of phonorecords of a sound recording or live performance or copies of proprietary information;

2. knows or has reason to believe that such copying was done without the consent of the owner; and

3. copies, possesses, buys or obtains such phonorecords or copies or proprietary information with the intent to:

(a) sell;

(b) derive commercial gain or advantage; or

(c) allow another person to derive commercial gain or advantage.

This section is not intended to subject a person to criminal liability if his or her intent in making the copy is not for commercial purposes but is strictly for his or her own personal use. Thus, for example, a person who tapes a record merely intending to use the tape for personal enjoyment without any intent to sell the tape or use it for any commercial purpose would not have committed an offense under this section.

It is not required that a person actually derive any profit from the recording or copy. Thus, for example, a person who sells the copies at a loss would still be in violation of this provision.

Subsection (b) also provides that it will be presumed that a person has the requisite intent if he or she possesses 5 or more unauthorized phonorecords of the same sound recording or recording of a live performance

Subsection (c) provides that copying or reproduction is not prohibited under this section if the copying or reproduction is: (1) specifically permitted by the U.S. copyright laws (Title 17, United States Code); or (2) a copy of a sound recording that is made by a licensed radio or television station or cable broadcaster, provided that the copy is made solely for broadcast or archival use.

Subsection (d) sets forth the penalty for this offense as a fine of up to $10,000 or imprisonment for up to 1 year, or both.

Subsection 115 reenacts the offense of unauthorized use of vehicles. This offense is currently codified in D.C. Code, sec. 22-2204. The offense has been reinstated in this section without substantive changes and is intended to carry forward the current law.

Section 116 reenacts the offense of taking property without right. This offense is currently contained codified in D.C. Code, sec. 22-1211. Section 116 carries forward the current definition of the offense.

The current penalty for taking property without right is a fine of up to $100 or imprisonment for up to 6 months, or both. The penalty has been changed to a maximum fine of $300 or imprisonment for up to 90 days, or both. The change in penalty, which was recommended by the United States Attorney's Office, has the effect of making the offense non-jury triable.

SUBTITLE 3. -- Fraud and Related Offenses.

Section 121 defines the offense of fraud. The local criminal code does not currently contain a general fraud provision. Consequently, consumer fraud and other types of fraud are currently prosecuted under a variety of theft related offenses, such as the offenses of false pretense, larceny after trust or larceny by trick. This section, for the first time, treats fraud as a separate offense from theft.

The provisions of this section are primarily intended to combat consumer fraud, although the provisions cover other types of fraud as well. The gravamen of this offense, which distinguishes it from theft, is engaging in a scheme or systematic course of conduct to defraud or obtain property of another. A scheme is basically any pattern of behavior calculated to deceive persons of ordinary prudence and comprehension. People v. Black & Kleaver, Inc., 427 NYS2d 133 (Ct.App. 1980). It does not matter whether the scheme is intended to deceive one person or several people.

The distinction between first and second degree fraud is that in first degree fraud it is required that a person actually obtain some property or cause another to lose property by means of the scheme, whereas in second degree fraud there is no requirement that the scheme be successful. Second degree fraud is basically patterned after the federal mail fraud statute (18 U.S.C. 1341), although no use of the mails is required.

Subsection (c) provides that fraud may be committed by making a false statement as to a future performance which the offender does not intend to perform or knows will not be performed. While intent or knowledge may be inferred from the circumstances surrounding the transaction, such intent or knowledge of the falsity may not be established solely from the fact that the promise was not performed. The language in subsection (c) is not intended to change the current law in this regard.

Section 122 sets forth the penalties for fraud. For fraud in the first degree, where property is actually obtained or lost, the penalty is imprisonment for not more than 10 years and/or a fine of not more than $5,000 or 3 times the value of the property, whichever is greater, if the value of the property so obtained or lost is $250 or more. If the

property is of some value less than $250, the penalty is imprisonment for up to 1 year and/or a fine of not more than $1,000. For fraud in the second degree, which does not require that property actually be obtained or lost, the penalty is imprisonment for not more than 3 years and/or a fine of up to $3,000 or 3 times the value of the property which was sought to be obtained, if the value of such property which was the object of the scheme was $250 or more. If the value of the property sought was less than $250, the penalty is imprisonment for up to 1 year and/or a fine of not more than $1,000.

Section 123 defines the offense of credit card fraud. Subsection (a) defines the term "credit card" as any credit card plate or other instrument or device issued to a person for his or her use in obtaining services or property. For the purposes of this section the term also includes debit cards.

Subsection (b) prohibits obtaining property of another by four types of conduct:

(1) using another's credit card without the consent of the other;

(2) using a revoked or cancelled credit card;

(3) using a falsified, mutilated or altered credit card; or

(4) representing oneself to be the holder of a credit card that in fact had not been issued.

The conduct must be done knowingly, and not by mistake or inadvertance. In addition, the conduct must be committed with the intent to defraud.

Subsection (c) provides that a credit card is deemed to be cancelled when notice in writing of the cancellation or revocation has been received by the named card holder.

Subsection (d) sets forth the penalties for this offense. If the value of the property obtained is $250 or more, the penalty is a fine up $5,000 dollars or imprisonment for up to 10 years, or both. If the value of the property is less than $250 dollars, the offense is punishable by a fine of up to $1,000 or imprisonment for up to 1 year, or both.

Section 124 sets forth the offense of false registration. The offense is currently codified in D.C. Code, sec. 22-1301 (c). This section carries forward the current definition of the offense, however, the penalty has been changed to imprisonment for not more than 90 days and/or a fine of not more than $300 in order to make the offense non-jury triable. Use of a false name of address does not, in itself create any criminal liability under this section, absent an intent to defraud the owner or manager by use of such false name or address.

SUBTITLE 4 -- Dealing in Stolen Property.

Section 131 estabishes a new offense of trafficking in stolen property. The creation of this offense authorizes the imposition of severe felony penalties upon persons who can be characterized as "professional fences", that is persons who are in the business of repeatedly dealing in stolen property. Such professional fences can be distinguished from persons who purchase or receive stolen property for their own use and who would be penalized by the provisions of section 132 (Receiving Stolen Property).

To be convicted of the offense of trafficking in stolen property a person must, on two or more separate occasions: (1) sell, pledge, transfer, distribute, dispense or otherwise dispose of stolen property as consideration for anything of value: or (2) buy, receive, posess or obtain control of stolen property with intent to do any of the foregoing. The person must know or have reason to believe that the property is stolen. However, as provided in subsection (c), it is not necessary that the property actual be stolen property. It is sufficient that on two or more occasions the person deals in property which he has cause to believe is stolen. Such a provision was strongly recommended by the United States Attorney's Office due to the frequent use of property in the custody of the police and property legitimately purchased by the police in large-scale undercover operations aimed at professional fences. Subsection (c) accomplishes this purpose by eliminating the defense of legal or factual impossibility.

Subection (d) sets forth the penalty for this offense. The offense is punishable by a fine of up to $10,000 or imprisonment for up to 10 years, or both.

Section 132 defines the offense of receiving stolen property and basically carries forward the current law in this regard. The elements of this offense are as follows:

(1) the defendant bought, received, or possessed or obtained control of stolen property;

(2) the property was in fact stolen by someone;

(3) at the time the defendant bought, received, possessed or obtained the stolen goods, he knew or had reason to believe the goods were stolen; and

(4) the defendant bought, received, possessed or obtained the goods with specific intent to deprive another or a right to the property or a benefit of the property.

Unlike trafficking in stolen property, in order to be convicted of receiving stolen property the goods must have been stolen by someone. This carrys forward the current law. However, subsection (b) provides that this is not a defense to a charge of attempted receiving stolen property. Under current law, regardless

of whether the defendant is positive that he or she is purchasing stolen property, he or she cannot be convicted of either receiving stolen property or attempted receiving unless the property is, in fact, stolen. Subsection (b) would eliminate the defense of impossibility as it applies to a charge of attempted receipt of stolen property.

Subsection (c) sets forth the penalties for this offense. The penalties are divided between a felony and a misdemeanor on the basis of the value of the property obtained. If the property has a value of $250 or more, the penalty is imprisonment for not more than 7 years or a fine of up to $5,000, or both. If the value of the property is less than $250, the offense is a misdemeanor punishable by a fine of up to $1,000 or imprisonment for up to 1 year, or both.

SUBTITLE 5 -- Forgery

Section 141 defines the offense of forgery as:

(1) making, drawing or uttering;

(2) a forged written instrument;

(3) with intent to defraud or injure another.

This definition carries forward the current law. As in prior law, this provision contains two separate offense, that of forgery and uttering.

Subsection (a) defines the terms "forged written instrument" and "utter" and provides a list, which is not exclusive, of items that constitute "written instruments".

Section 142 sets forth the penalties for forgery. The penalties are divided into 3 grades based upon the value and nature of the forged instrument. The first category is a felony punishable by up to 10 years imprisonment or a fine of up to $10,000 or both, if the instrument is:

(a) a stamp, legal tender or other instrument issued by a government;

(b) a stock, bond or other instrument representing and interest in or claim against an organization or corporation;

(c) a public record;

(d) a official government instrument;

(e) a payroll check;

(f) a deed, will, contract or other commercial instrument; and

(g) any instrument having a value of $10,000 or more.

The second category is a felony punishable by imprisonment for up to 5 years or a fine of up to $5,000, or both, if the instrument is:

(a) a token, fare card or other symbol of value used in the place of money;

(b) a prescription for controlled substances; or

(c) any instrument having a value of $250 or more.

The third category is a felony punishable by up to 3 years imprisonment or a fine of up to $2,500 or both. The penalty applies in any case which does not fit into one of the above categories.

SUBTITLE 5 — Extortion and Blackmail

Section 151 defines the offense of extortion. The definition is largely derived from the Hobbs Act (18 U.S.C. 1951) and is similar to the extortion law currently in effect in the state of Maryland (M.D. Code, Art. 27, §562B and 562C).

The offense of extortion is divided into two sections. The gravamen of both sections is the obtaining or attempting to obtain property of another. As defined in section 101 (3), property is broadly defined to include anything of value.

The first section prohibits obtaining or attempting to obtain property of another with the other's consent which was induced by (1) wrongful use of actual or threatened force or violence; or (2) wrongful threat of economic injury.

The threat of force or violence may be a threat against any person and is intended to cover threats that anyone will cause physical injury to or kidnapping of any person. The threat of force or violence also covers a threat of property damage or destruction. The same types of threats are covered under current law.

The threat of economic injury is new to the District of Columbia law on extortion. The threat, however, must be wrongful. It is not intended to cover the threat of labor strikes or other labor activities. It is also not intended to cover consumer boycotts. However, if for instance a leader of an organization threatens a strike or boycott in order to extort anything of value for his personal benefit, unrelated to the interests of the group which he represents, such conduct would be prohibited by this section.

The second paragraph of subsection (a) prohibits obtaining or attempting to obtain property of another, with the other's consent, which was obtained under the color or pretense of official right. This section codifies a common law offense which is not currently codified in the District of Columbia criminal code.

This section prohibits a public officer from obtaining or attempting to obtain property of another not due him or his office.

Subsection (b) sets forth the penalty for extortion as a fine of not more than $10,000 or imprisonment for up to 10 years, or both.

Section 152 defines the offense of blackmail. The conduct prohibited by this section is:

(1) threatening to accuse any person of a crime; or

(2) threatening to expose a secret or publicize an asserted fact which may subject a person to hatred, contempt or ridicule; or

(3) threatening to impair the reputation of any person.

Under section 152, this prohibited conduct must be done with the intent to obtain property of another or to cause another to do or refrain from doing any act. This intent element is the same as required by current law.

The type of threats prohibited by this section are the same as those prohibited by current law except that a threat to injure one's reputation is currently prohibited by the extortion statute (D.C. Code, sec. 22-2306).

Subsection (b) of this section carrys forward the current penalty for blackmail which is a fine of up to $1,000 or imprisonment for not more than 5 years, or both.

TITLE II.-- ENHANCED PENALTY.

Section 701 authorizes an enhanced penalty for certain theft and white collar crimes committed against senior citizens under this section. Under this section, authorized fines and sentences are increased for any person who commits one of the listed offenses against an individual who was 60 years of age or older at the time of the offense. This special penalty provision is new to District of Columbia law.

The enhanced penalty provided by section 201 is intended to apply to corporate defendants, as well as to individual defendants. However, the section is only intended to cover victims who are natural persons and not corporations or other legal entities.

The enhanced penalty which may be imposed on an offender is a maximum fine in the amount of 1 and 1/2 times the maximum fine authorized for the offense and a maximum term of imprisonment for 1 and 1/2 times the maximum term authorized for the offense.

The offense to which this penalty shall apply include the theft and white collar crimes of theft, attempted theft, extortion and fraud in the first and second degrees, as well as the related crimes of robbery and attempted robbery.

Subsection (c) was added by amendment at the June 1, 1982 Committee meeting. This subsection provides that it is an affirmative defense that the offender knew or had reason to believe that the victim was not 60 years of age or older at the time of the offense. As with other affirmative defenses, the burden is on the offender to raise the defense and go forward with evidence with respect to the defense.

TITLE III.-- BRIBERY OFFENSES.

Section 301 sets forth definitions for terms used in this title. The terms will be discussed in the context of the section in which the term is used.

Section 301 defines the offense of bribery of a public servant. Subsection (a) covers the acts of offering, giving or agreeing to to give a bribe to a public servant and the acts of soliciting, demanding, accepting or agreeing to accept a bribe as a public servant. The current law, D.C. Code, sec. 22-701, prohibits only the offer or giving of a bribe to a public servant, but does not cover the reverse situation in which a public servant solicits a bribe.

The elements of the offense of bribery are as follows:

(1) the acts of directly or indirectly, offering, giving or agreeing to give anything of value to a public servant or the acts of directly or indirectly soliciting, demanding, accepting or agreeing to accept anything of value as a public servant;

(2) such acts are done corruptly;

(3) such acts are done in return for an agreement that:

(a) an official act of the public servant will be influenced thereby; or

(b) such public servant will violate an official duty; or

(c) such public servant will commit, aid in committing, collude in or allow any fraud against the District of Columbia.

As to the first element, the acts may be done "directly or indirectly". This language is intended to cover the situation where an intermediary is used or where it is agreed that the thing of value will be given to someone or some organization, other than the public servant being bribed, in return for his or her being influenced. The term "anything of value" is defined in D.C. Code section 22-102 to mean things possessing actual as well as intrinsic value.

The term "public servant" means any officer, employee, or other person authorized to act on behalf of the District of Columbia. The term includes any person elected, nominated or appointed to be a public servant. Jurors are also covered by this term but independent contractors are not. The acts which are prohibited include the acts of offering as well as actually giving and soliciting as well as actually receiving. This language is intended not only to cover the situations where the bribery attempt is actually successful but also the situation where the attempt is unsuccessful. There is no requirement that an agreement actually be reached. Therefore, if a person offers something of value to a public servant with the intent to get an agreement from that person that he or she will be influenced thereby and the public servant refuses, the person offering the bribe is guilty of bribery under this section.

As to the second element, the acts must be done "corruptly". This language is used in the current federal bribery statute (18 U.S.C. 201 (b) and (c)) and bespeaks of a high degree of criminal knowledge. The term has been used to indicate that the act must be done "voluntarily and intentionally with the bad purpose of accomplishing either an unlawful end or result or a lawful end or result by some unlawful method or means." (Devitt & Blackmar, Federal Practice and Jury Instructions, §34.08) Thus, while it is not corrupt to attempt to influence a public servant, it is corrupt to do so by means of offering money or other things of value to accomplish that end.

The third element is that the acts must be done "in return for" an agreement or understanding. This language is intended to capture the concept of quid pro quo which has traditionally been the gravamen of the offense of bribery. The concept is basically that of a bargin. In other words, the person is offering something in order to get something in return.

The types of agreements or understandings that are prohibited are as follows:

1. An agreement or understanding that the public servant to whom the bribe is offered or who solicits the bribe will be influenced in the performance of his or her official acts. The term "official acts" is defined in section 301 (4) to mean any conduct that involves an exercise of discretion and includes any decision, opinion, recommendation, judgment or vote.

2. An agreement or understanding that the public servant will violate an official duty. The term "official duty" means any conduct which is not involving an exercise of discretion and is intended to include ministerial acts. An official duty may be violated by either acting affirmatively or omitting to do an act.

3. An agreement or understanding that the public servant will commit any fraud or collude in any fraud against the District of Columbia. An example of this type of conduct would be offering something of value to an officer in charge of administering a government contract in return for his or her agreement to ignore the failure of the contractor to meet the specifications of the contract. The offense of bribery applies only to future conduct on the part of the public servant and does not apply to past acts.

Subsection (b) states that nothing in this section shall prohibit concurrance in official action in the course of legitimate compromise between public servants. This language has been derived from the federal criminal code proposal (S. 1630).

This language clarifies that log-rolling is excluded from the context of bribery.

Subsection (c) sets forth the penalty for bribery as imprisonment for not more than ten years and/or a fine of not more than $25,000 or three times the amount of the thing of value offered or solicited, whichever is greater. The current penalty for bribery under D.C. Code, sec. 22-701 is a fine of not more than $500 or imprisonment for not more than 3 years or both.

Section 303 prohibits bribery of witnesses. Bribery of a witness is currently prohibited by D.C. Code, section 22-701. The current law covers attempts to bribe witnesses but does not cover witnesses who solicit bribes. This section covers both situations. As in bribery of a public servant, this section prohibits corruptly offering or giving anything of value to a witness or as a witness, soliciting or accepting anything of value in return for an agreement or understanding. In this case, the sought after goal must be to influence the testimony of such a witness or to have the witness absent himself from an official proceeding.

Subsection (b) is derived from the current federal law and has been included to insure that witness fees and other legitimate expenses are not prohibited.

Subsection (c) sets forth the penalty for the offense as imprisonment for not more than 5 years or a fine of not more than $2,500 or both.

TITLE IV -- Perjury and Related Offenses.

Section 401 defines the offense of perjury. This section prohibits two types of perjury: (1) lying under oath or affirmation in testimony before a competent tribunal, officer or person; and (2) as a notary, lying in a certification. Both prohibitions are drawn from current law.

Subsection (a)(1) decribes the tradition offense of perjury. This subsection restates the current law, as currently codified in D.C. Code, sec. 22-2501, with one minor change. Section 401 requires that the testimony be in fact false. This clarifies an ambiguity in the current law.

Subsection (a) (2) is also derived from current law, D.C. Code, sec. 22-1308. This subsection relates to certifications by notaries. The subsection changes the current law in two respects. First, the current law has been expanded to cover those persons who are authorized to take proof or certification as to an oath or affirmation or acknowledgment of an instrument rather than just officers authorized to take proof of acknowledgment of an instrument which may be recorded. Second, this section also covers those who act "as a notary or other officer" even if that person is not in fact authorized to take proof or acknowledgment of an instrument.

Subsection (b) sets forth the penalty for perjury as a fine of not more than $5,000 or imprisonment for not more than 10 years, or both. The current penalty for perjury does not include a fine.

Section 402 defines the offense of subornation of perjury as wilfully procuring another to commit perjury. Subornation of perjury is currently prohibited by D.C. Code, sec. 22-2501. However, no definition of the offense is provided in that code section. Rather, the common law is relied upon to provide the definition of the offense. This section of the bill restates the common law definition of subornation of perjury and thus carries forward the current law. Subornation of perjury is penalized as severely as perjury.

Section 403 creates a new offense of false swearing. The offense is committed if the following conditions are met:

(1) a person wilfully makes a false statement;

(2) the false statement is in fact material;

(3) the false statement is made in writing;

(4) the statement is made under oath or affirmation; and

(5) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

It is not required that such a statement be made before a tribunal, since the primary purpose of this section is to protect the integrity of documents affirmed or acknowledged by notaries.

The penalty for this offense is imprisonment for not more than 3 years, or a fine of up to $2,500, or both.

Section 404 prohibits making false statements in writing to be submitted to any instrumentality of the government of the District of Columbia, provided that the writing indicates that the making of a false statement is punishable by criminal penalties. This section is new to District of Columbia law. Currently, there are numerous statutes which prohibit the making of false statements in particular situations, such as statements before certain government boards and commissions. However, there is no general prohibition against making false statements in a government matter. Consequently, if a particular false statement is not specifically covered by one of these statutes, it is not prohibited even though the form on which the statement is made provides warning that such statements are made under the penalty of perjury. The general false statements provision of section 404 serves to fill this gap in the current law.

The penalty for this offense is a fine of up to $1,000 or imprisonment for up to 1 year, or both.

TITLE V. — OBSTRUCTION OF JUSTICE.

Section 501 sets forth definitions for terms used in this title. Paragraph (1) defines the term "court of the District of Columbia" as the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. The current law is ambiguous as to what is meant by "a court" and this definition serves to clarify the law in this regard.

Paragraph (2) defines "criminal investigator". The definition is taken from the current law, however, it has been expanded to cover prosecuting attorneys engaged in a criminal investigation of any violation of a criminal statute in effect in the District of Columbia.

Paragraph (3) defines the term "criminal investigation". The definition is derived from the current law, D.C. Code, sec. 22-703(b).

Paragraph (4) defines the term "official proceeding" as any proceeding in a court of the District of Colmbia or before any agency or department of the District of Colmbia government.

Section 502 defines the offense of obstruction of justice. The definition is taken from current law, however, three changes have been made.

First, in subsection (a)(1), the current law, D.C. Code, sec. 22-703(a), reads "corruptly, by threats or force" endeavors to influence, intimidate or impede any witness, juror or officer of any court of the District of Columbia. This language has been changed to read "corruptly, or by threats or force". This change has the effect of expanding the law to cover corrupt endeavors to influence, intimidate or impede which do not involve threats of force or violence. Thus corrupt acts such as bribery, or misrepresentation would also be prohibited.

The second change effects subsections (a)(3) and (a)(4). Those paragraphs prohibit endeavoring to prevent the communication of information relating to a violation of a criminal statute to a criminal investigator and retailing against a person for giving such information to a criminal investigator. As previously noted, the term criminal investigator has been expanded to not only cover Metropolitan Police officers but also prosecuting attorneys.

The third change to the current law involves subsection (a)(5). This paragraph is new to District of Columbia law, although it is currently contained in federal law. The paragraph prohibits retaliation against any person for or because of that person or another person performing his or her duties as a juror, witness or officer of the court. Specifically, the paragraph prohibits injuring any person or his property on account of any person performing his offical duties as a juror, witness or officer of the court.

Subsection (b) sets forth the penalty for obstruction of justice as a fine of not more than $1,000 or imprisonment for not more than 3 years, or both. This

section maintains the current penalty for the offense.

Section 503 creates a new offense of tampering with physical evidence. Currently, D.C. Code, sec. 22-3107 prohibits destroying or defacing public records. This existing statute is primarily aimed at protecting court records rather than preventing the destruction of evidence.

The elements of the offense defined in section 503 are as follows:

1. the defendant altered, destroyed, mutilated, concealed or removed any record, document or other object;

2. at the time the defendant did so, he or she: (a) knew or had reason to believe an official proceeding had begun or (b) knew an official proceeding was likely to be instituted; and

3. the defendant committed the acts of altering, destroying, mutilating, concealing or removing, the record, document or other object with the intent to impair its integrity or availability for use in an official proceeding.

Subsection (b) sets forth the penalty for tampering with physical evidence. The penalty is the same as that established for obstruction of justice.

TITLE VI.— AMENDMENTS AND REPEALERS.

Section 601 sets forth amendments which conform certain existing statutes to the provisions contained in this bill. The following statutes are amended by this section: D.C. Code, secs. 22-3106, 22-3201, 23-546, 23-581(a)(2)(A) and (B); 26-404, and 26-320.

Section 602 repeals certain statutes in the current law. With one exception these statutes are all contained in the criminal law title (Title 22) of the District of Columbia Code. The following chart (Chart A) illustrates the changes made by section 602. This chart lists the D.C. Code sections being repealed by section number and subject matter, and sets forth the provisions of this bill, by section number and heading, which address the same or similar subject matter. An additional chart (Chart B) is provided for convenience and lists those statutes in Title 22 of the D.C. Code relating to theft and white collar crimes that are not amended or repealed by this bill. The statutes listed in Chart B will remain in effect following enactment of this bill.

CHART A: PARALLEL REFERENCE CHART FOR D.C. CODE AND BILL NO. 4-133 (REPEALERS)

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-701	Definition and penalty.	Sec. 302, 303	Bribery of a public servant, bribery of a witness.
22-702	Offering or receiving money, property, or valuable consideration to procure office promotion for Council.	Sec. 302	Bribery of a public servant.
22-703	Obstruction of justice.	Sec. 502	Obstruction of justice.
22-1201	Embezzlement of property of District.	Sec. 111	Theft.
22-1202	Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.	Sec. 111	Theft.
22-1203	Embezzlement of note not delivered.	Sec. 111	Theft.
22-1204	Receiving embezzled property.	Sec. 131, 132	Trafficking in stolen property, Receiving stolen property.
22-1205	Embezzlement by carriers and innkeepers.	Sec. 111	Theft.
22-1206	Embezzlement by warehouseman, factors, storage, forwarding or commission merchant.	Sec. 111	Theft.
22-1207	Violations of §22-1206 to 22-1206 where value of propertry less than $100.	Sec. 112	Penalties for Theft.

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-1208	Conversion by commission merchant, cosignee, person selling goods on commission, and auctioneers.	Sec. 111	Theft.
22-1209	Embezzlement by mortgagor of personal property in possession.	Sec. 111	Theft.
22-1210	Embezzlement by executors and other fiduciaries.	Sec. 111	Theft.
22-1211	Taking property without right.	Sec. 116	Taking property without right.
22-1301	False pretenses.	Sec. 111, 121 and 124	Theft; Fraud; Fraudulent Registration.
22-1307	Wearing of using insignia of certain organizations.	Sec. 111, 121	Theft, Fraud.
22-1308	False Certificate of Acknowledgment.	Sec. 401	Perjury.
22-1401	Forgery.	Sec. 141	Forgery.
22-1404	Decedent's estate -- secreting or converting property, documents or assets.	Sec. 111, 121	Theft, Fraud.
22-1405	Same -- taking away or concealing writings.	Sec. 111, 121	Theft, Fraud.
22-1407	Fraud by use of slugs to operate controlled mechanism.	Sec. 111	Theft.
22-1408	Manufacture, sale, offer for sale, possession of slugs or devise to operate coin-controlled mechanism.	Sec. 121	Fraud.

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-1409	"Person" defined.	None	
22-2201	Grand Larceny.	Sec. 111, 112	Theft; Penalties for Theft.
22-2202	Petit larceny; order of restitution.	Sec. 111, 112	Theft; Penalties for Theft.
22-2203	Larceny after trust.	Sec. 111	Theft.
22-2204	Unauthorized use of vechicles.	Sec. 115	Unauthorized Use of Vehicles.
22-2204(a)	Theft from vehicles.	Sec. 111	Theft.
22-2205	Receiving stolen goods.	Sec. 131, 132	Trafficking in stolen property; Receiving stolen
22-2206	Stealing property of Distrrict.	Sec. 111	Theft.
22-2207	Receiving property stolen from District.	Sec. 131, 132	Trafficking in stolen property; Receiving stolen property.
22-2208	Destroying stolen property.	Sec. 132, 503	Receiving stolen property;tampering with physicl evidence.
22-2301	Libel -- Penalty.	None	
22-2302	Same -- Publication.	None	

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-2303	Same -- Justification.	None	
22-2304	False charges of unchastity.	None	
22-2305	Blackmail.	Sec. 152	Blackmail.
22-2306	Intent to commit extortion by communication of illegal threats and demands.	Sec. 151, 152	Extortion; Blackmail.
22-2501	Perjury; subornation of perjury.	Sec. 401, 402	Perjury; Subornation of perjury.
22-2602	Misprisons by officers or employees of jail.	Sec. 302	Bribery of a public servant.
22-3115	Offenses against property of electric lighting, heating, or power companies.	Sec. 111	Theft.
22-3116	Tapping gas pipes.	Sec. 111	Theft.
22-3117	Tapping injuring water-pipes; tampering with water meters.	Sec. 111	Theft.
22-3404	Kosher meat -- Sale; labeling; signs displayed where kosher and non-kosher meats sold.	Sec. 121	Fraud.
22-3405	Same -- Definitions.	Sec. 121	Fraud.
22-3406	Same -- Penalties	Sec. 122	Penalties for Fraud.

Section Repealed	Heading of Repealed Section	Section in Bill No. 4-133 dealing with that subject matter	Heading of Section in Bill No. 4-133
22-3409	Mislabelling Potatoes -- Prohibited.	Sec. 121	Fraud.
22-3410	Same -- Sign to show grade.	Sec. 121	Fraud.
22-3411	Same -- Exception for potatoes.	None	
22-3412	Same -- Penalties.	Sec. 121	Penalties for Fraud.
22-3413	Procuring enlistment of criminals.	None	
22-3701	Issue of receipt for goods not received.	Sec. 11, 121	Theft; Fraud.
22-3702	Issue of receipt containing false statement.	Sec. 111, 121	Theft; Fraud.
22-3703	Issue of duplicate receipts not so marked.	Sec. 111, 121	Theft; Fraud.
22-3704.	Issue of receipt that does not state warehouseman's ownership of goods.	Sec. 111, 121	Theft; Fraud.
22-3705	Delivery of goods without obtaining negotiable receipts.	Sec. 111, 121	Theft; Fraud.
22-3706	Negotiation of receipt for mortgaged goods.	Sec. 111, 121	Theft; Fraud.
23-314	Joinder of inconsistent offenses concerning the same property.	None.	

Chart B: D.C. CODE STATUTES RELATING TO THEFT AND WHITE COLLAR CRIME WHICH ARE NOT EFFECTED BY BILL NO. 4-133

Code Section	Section Heading
22-704	Corrupt influence
22-1302	Recordation of deed, contract or conveyance with intent to extort money.
22-1303	False personation before court, officers, or notaries.
22-1304	Falsely impersonating public officer or minister.
22-1305	False personation of inspector of departments of District.
22-1306	False personation of police officer.
22-1402	Forging or imitation brands or packaging of goods.
22- 1410	Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; "credit" defined.
22-1411	Fraudulent advertising.
22-1412	Prosecution under §22-1411.
22-1413	Penalty under §22-1411.
22-1414	Fraudulent interference or collusion in jury selection.

TITLE VII.-- APPLICABILITY AND EFFECTIVE DATE.

Section 701 sets forth the applicability of the bill and the effective date provision. Subsection (a) relates to the applicability of this bill. It provides that the provisions of this bill shall only apply to offenses committed on or after its effective date. Offenses committed prior to the effective date of this bill must be prosecuted under the prior law, which shall remain in effect for this purpose. This provision ensures that prosecutions will not be abated. The provision also is intended to comply with the constitutional restrictions against ex post facto laws.

Subsection (b) sets forth the effective date of this bill. As criminal law legislation, this bill is governed by section 602 (c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act.

FISCAL IMPACT

The analysis of the fiscal impact of Bill 4-133, requested from the Executive Branch, has not been received to date. Although the fiscal impact of this legislation clearly cannot be determined with precision, the following provisions may have an impact on the District of Columbia's budgetary process:

1. the increase in the authorized penalty up to 1-1/2 times that otherwise authorized for certain, enumerated offenses when committed against a senior citizen;

2. the expansion of the scope of prohibited conduct and increases in the authorized imprisonment for certain other offenses;

3. the creation of several new criminal offenses, such as trafficking in stolen property, fraud, making false statements, false swearing, tampering with physical evidence, and commercial piracy; and

4. the provision which permits aggregation of the amounts received pursuant to a single cheme or course of conduct during the commission of theft, fraud and credit card fraud, so as to allow these offenses to be prosecuted as felony offenses carrying more severe penalties rather than as a series of misdemeanors offenses.

The fiscal impact of the above provisions could be offset, at least in part, by the significant increases in authorized fine levels contained in Bill 4-133. Savings may also be generated by changes in the offenses of false registration, taking property without right and shoplifting from minor misdemeanor offenses to misdemeanor offenses for which a jury trial may not be requested.

No fiscal impact is expected to result from the repeal of criminal penalties for the current offenses of mislabeling food, procuring the enlistment of criminals and criminal libel since these offenses are either not prosecuted criminally or are included within the ambit of other criminal offenses contained in Bill 4-133.

EXECUTIVE BRANCH COMMENTS

The Executive Branch position on Bill No. 4-133 was presented during public hearings held by the Committee on the Judiciary on March 12, 1982. The comments submitted at that time indicated the Executive Branch's support for Bill No. 4-133. These comments specifically noted the need for revising the theft and white collar crime provisions of the local criminal law. The following is a excerpt from the comments received from the Executive Branch.

> We (the Executive Branch) applaud the intent and spirit of Bill No. 4-133... Focus on these crimes is long overdue. The gap in the District of Columbia Code, caused by the absence of any or adequate provisions concerning various forms of theft, extortion, shoplifting, fraud, forgery and other crimes has hampered law enforcement efforts on the local level. Bill No. 4-133 represents a vast improvement in the current District of Columbia Code. It affords greater protection for consumers and offers more realistic protection for operaters of business. Moreover, it addresses a critically important area of law enforcement - that pertaining to sophisticated financial schemes which are common tools of white collar criminals.11/

COMMITTEE ACTION

The Committee on the Judiciary met on June 1, 1982, to mark-up and report Bill No. 4-133 as an amendment in the nature of a substitute. At that time one amendment was made and your Committee voted to recommend the bill as an amendment in the nature of a substitute by the following vote margin: four (4) in favor (Clarke, Rolark, Ray, Moore); one (1) opposed (Crawford). The accompaning report was also approved by the same vote margin: four (4) in favor (Clarke, Rolark, Ray, Moore); one (1) opposed (Crawford).

11/Ms. Judith Rogers, Corporation Council, representing the Executive Branch of the District of Columbia, before the Committee on the Judiciary (March 12, 1982).

DC LAW 4-164

Council of the District of Columbia
Memorandum

District Building, 14th and E Streets, N.W. 20004 Fifth Floor 724-8000

To MEMBERS OF THE COUNCIL

From JOHN P. BROWN, JR., SECRETARY TO THE COUNCIL

Date FEBRUARY 12, 1981

Subject REFERRAL OF PROPOSED LEGISLATION

Notice is herewith given that the following proposed legislation has been filed with the Office of the Secretary on February 12, 1981. Copies are available in Room 28, Legislative Services Unit.

TITLE: District of Columbia Theft and White Collar Crimes Act of 1981, Bill 4-133

INTRODUCED BY: Councilmember Clarke

The Chairman is referring this proposed legislation to the Committee on the Judiciary.

cc: General Counsel
Legislative Counsel
Legislative Services Unit

RECEIVED
LSU
FEB 17 1981

J-66979

David A. Clarke

A BILL

4-133

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 12, 1981

Councilmember David A. Clarke introduced the following bill, which was referred to the Committee on the Judiciary.

To reform the criminal laws of the District of Columbia relating to theft, fraud, bribery, perjury, blackmail, extortion, obstruction of justice and libel; and for other purposes.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF 3.1
COLUMBIA, That this act may be cited as the "District of 3.2
Columbia Theft and White Collar Crimes Act of 1981".

Title I.--General Provisions. 3.5

Sec. 101. General Definitions. 3.8

For purposes of this act: 3.10

(1) the term "property" means anything of value and 3.12
includes:

(A) real property, including things growing on, 3.14
affixed to or found on land;

(B) tangible or intangible personal property, 3.16
including, money, rights, privileges, interests, and claims; 3.17
and

(C) services. 3.19

(2) the term "property of another" means any property in which a person other than the offender has an interest which the offender is not privileged to interfere with or infringe, regardless of whether the offender also has an interest in that property. The term does not include any property in possession of the offender as to which any other person has only a security interest (as defined in section 1-201(37)) of title 28, District of Columbia Code).

(3) The term "services" includes:

(1) labor, whether professional or non-professional;

(2) the use of vehicles or equipment;

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

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

(5) admission to public exhibitions or places of entertainment; and

(6) educational and hospital services, and accommodations and other related services.

Title II.--Theft and Related Offenses.

Sec. 201. Definitions for Theft Offenses.

For purposes of this title, the term "stolen property" means property obtained by theft, robbery, or extortion.

Sec. 202. Valuation of Property or Services.

If the value of the property or services is determinative of the sentence to be imposed or is otherwise relevant in a prosecution under this title, the value of the property or services is--

(a) the fair market value at the time and place of the offense;

(b) in the case of a written instrument which does not have a readily ascertainable fair market value and which constitutes evidence of a debt, the amount due and collectible at maturity less any part that has been satisfied; or

(c) in the case of a written instrument which does not have a readily ascertainable fair market value and which does not constitute evidence of a debt, the greatest amount of economic loss which the owner of that instrument might reasonably suffer by virtue of the loss of that instrument.

If the offender gave consideration for or had a legal interest in the property or service involved, the amount of that consideration or the value of that interest shall be deducted in determining the value of the property or services.

Sec. 203. Consolidation of Theft Offenses.

(a) Conduct denominated in this title as theft by unlawful taking or disposition, theft by false pretenses, theft of services, and theft by receiving stolen property constitutes the offense of theft. The offense of theft includes the separate offenses previously known as larceny, embezzlement, taking property without right, false pretenses, and receiving stolen property.

(b) An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this title, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Sec. 204. Penalties for Theft Offenses.

(a) If the value of the property involved in the theft is over $250, the offender shall be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(b) If the value of the property involved in the theft is $250 or less, the offender shall be fined not more than

one thousand dollars or imprisoned for not more than one year, or both.

(c) If the victim is a natural person 60 years of age or older, and the offender, being under 55 years of age, knows or has reason to believe the victim was over 60 years of age, the offender may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed in subsection (a) or (b), whichever is applicable, and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed in subsection (a) or (b), whichever is applicable.

(d) Amounts involved in a theft offense shall be aggregated in determining the sentence to be imposed if such amounts were obtained pursuant to a common scheme, a plan, or a course of conduct, whether the amounts were obtained from the same person or several persons.

Sec. 205. Theft by Unlawful Taking or Disposition.

Whoever takes, exercises control over, or obtains the property of another with intent--

(1) to deprive, without lawful authority, the other of a right to the property or a benefit of the property; or

(2) to appropriate, without lawful authority, the property to his own use or to the use of another person is guilty of theft.

Sec. 206. Theft by False Pretenses.

Section 342 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-1301) is amended as follows:

(a) by inserting the phrase "or attempts to obtain" following the word "obtains"; and

(b) by inserting the phrase "or attempts to procure" following the phrase "or procures"; and

(c) by inserting the phrase ", or attempts to sell, barter, or dispose of" immediately following the phrase "whoever fraudulently sells, barters, or disposes of"; and

(d) by striking the phrase ", if the value of the property or the sum or value of the money, property, or service so obtained, procured, sold, bartered, or disposed of is $100 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than $1000 or imprisoned for not more than one year, or both." and inserting in lieu thereof the phrase "be guilty of theft by false pretenses. A false pretense may include a

promise of performance made without intent to perform or knowing that the promise will not be performed provided, that such intent or knowledge shall not be inferred from the fact alone that the promise was not subsequently performed."; and

(e) by striking the phrase ", if the unpaid amount of such lodging, food, or other item of value is $100 or more, be guilty of a felony and fined not more than $3,000 or imprisoned for not less than one year nor more than three years, or both, or if such unpaid amount is less than $100, be guilty of a misdemeanor and fined not more than $1000 or imprisoned for not more than one year, or both." and inserting the phrase "be guilty of theft by false pretenses." in lieu thereof.

Sec. 207. Theft of Services.

(a) Whoever, with intent to avoid payment for services he knows are available only for compensation, knowingly obtains services for his use or the use of another without paying for those services is guilty of theft.

(b) For purposes of this section, intent to avoid payment is presumed if a person departs from the place where services are obtained knowing that no payment had been made for the services received in circumstances where payment is ordinarily made immediately upon the rendering of service or

prior to departure from the place where the services are obtained.

Sec. 208. Theft by Receiving Stolen Property.

(a) Whoever buys, receives, possesses or obtains control of stolen property of another, intending to deprive the owner of it or to appropriate it and knowing or having reason to believe that the property is stolen, is guilty of theft.

(b) A person may not be convicted of both stealing property and receiving stolen property with regard to property obtained or appropriated in the same transaction or series of transactions.

Sec. 209. Trafficking in Stolen Property.

(a) Whoever buys, receives, possesses, or obtains control of property of another intending to sell or transfer for value any such property to any other person and knowing or having reason to believe that the property is stolen property shall be guilty of trafficking in stolen property and shall be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both if the value of the property is two hundred and fifty dollars or more and shall be fined not more than five thousand dollars or imprisoned for not more than three years, or both if the

value of the property is less than two hundred and fifty dollars.

(b) A person may not be convicted of both stealing property and trafficking in stolen property with regard to property obtained or appropriated in the same transaction or series of transactions.

Sec. 210. Shoplifting.

(a) Whoever, with the intent to appropriate without complete payment any personal property of another that is offered for sale, or with the intent to defraud the owner of the value of any such property:

(1) wilfully conceals or takes possession of any such property; or

(2) wilfully removes or alters the price tag, serial number, or other identification mark that is imprinted on or attached to any such property; or

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

shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(b) It is not an offense under section 906 of An Act To establish a code of law for the District of Columbia,

approved March 3, 1901 (31 Stat. 1337; D.C. Code, sec. 22-103) to attempt to commit an offense under this subsection.

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

(1) the person detaining or causing such 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 subsection (a); and

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

(3) the person detained or arrested was released within 15 minutes of the detention or arrest, or law enforcement authorities were notified within that period; and

(4) the person detained or arrested was released within 60 minutes of the detention or arrest, or was surrendered to law enforcement authorities within that period.

Sec. 211. Commercial Piracy.

(a) Whoever reproduces or otherwise copies, possesses, buys or otherwise obtains copies of a sound recording, a live performance, or proprietary information with knowledge that the copies were made without the consent of the owner and with the intent to sell, derive value from, or allow another person to derive value from such copies, shall be fined not more than ten thousand dollars or imprisoned for not more than one year, or both. A presumption of intent to sell arises if the offender possesses either five or more unauthorized copies of the same sound recording or recording of a live performance or twenty or more unauthorized copies of differing sound recordings or recordings of live performances.

(b) For purposes of this section:

(1) a copy is not unauthorized if:

(A) the copying or other reproduction is specifically permitted by title 17 of the United States Code; or

(B) the copying or other reproduction is of a sound recording, and it is made by a licensed radio or television station or a cable broadcaster for broadcast or archival use.

(2) the term "owner" with respect to copies means the person who owns the original fixation of the property

involved, except that in the case of a live performance the term means the performer or performers.

(3) the term "proprietary information" includes customer lists, mailing lists, formulas, recipes, computer programs, unfinished designs, unfinished works of art in any medium, and any other information the primary commercial value of which may diminish if its availability is not restricted.

Sec. 212. Extortion in the First Degree.

Whoever, with intent to obtain property of another, demands a ransom for the release of any kidnapped person or threatens to:

(a) cause physical harm in the future to the person threatened or to any other person;

(b) cause damage to property;

(c) subject the person threatened or any other person to physical confinement or restraint; or

(d) engage in other conduct constituting a felony

shall be guilty of extortion in the first degree and shall be fined not more than ten thousand dollars, imprisoned for not more than ten years, or both.

Sec. 213. Extortion in the Second Degree.

(a) Whoever, with intent to obtain property of another or to cause another to do or refrain from doing any act, threatens to:

(1) accuse any person of a crime;

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

(3) impair the financial, professional or personal reputation of any person, including a deceased person;

shall be guilty of extortion in the second degree and shall be fined not more than five thousand dollars, imprisoned for not more than two years, or both, unless he honestly and reasonably claims:

(1) the property sought as restitution or indemnification for the asserted wrong which prompted the threat;

(2) the property sought as compensation for property or lawful service; or

(3) the action sought as a justifiable means to compel the person threatened to take lawful and reasonable action with respect to the subject matter of the threat.

Title III.--Fraud and Related Offenses.

Sec. 301. Definitions for Fraud Offenses.

For purposes of this title:

(1) the term "false or fraudulent pretense, representation, or promise" includes:

(A) statements as to future performance which the offender does not intend to perform substantially or knows will not be performed, but such intention or knowledge shall not be inferred from the fact alone that the promise was not subsequently performed; and

(B) a failure to state a material fact which is necessary to avoid making a statement misleading.

(2) the term "scheme or artifice" includes a plan or course of action intended to deceive more than one victim or a single victim through a series of transactions.

Sec. 302. Fraud in the First Degree.

Whoever, with intent to execute a scheme or artifice to defraud or to obtain any property of another by means of a false pretense, representation, or promise, obtains property of another by means of such scheme or artifice shall be fined not more than five thousand dollars or three times the value of the property obtained, whichever is greater, or imprisoned for not more than seven years, or both.

Sec. 303. Fraud in the Second Degree.

Whoever, with intent to obtain property of another, executes, in whole or in part, a scheme or artifice to

defraud or a scheme or artifice to obtain any property of another by means of a false pretense, representation, or promise shall be fined not more than three thousand dollars or three times the value of the property sought to be obtained, whichever is greater, or imprisoned for not more than five years, or both.

Sec. 304. Credit Card Fraud.

(a) Whoever, for the purpose of obtaining property of another and with intent to defraud the issuer, a person or organization providing property or services, or any other person:

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

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

(3) knowingly uses a falsified, mutilated, or altered credit card or a number or description thereof;

(4) represents that he is the holder of a credit card and such credit card has not in fact been issued.

(b) For purposes of this section, the term "credit card" means an instrument or device, whether known as a credit card, credit plate, or by any other name, issued by

an issuer for use of the cardholder in obtaining property or services of another on credit.

(c) For purposes of subsection (a)(2) of this section, a credit card shall be deemed cancelled or revoked when notice in writing thereof has been received by the named holder as shown on such credit card or by the records of the issuer.

(d) Credit card fraud shall be punished by a fine of not more than three thousand dollars or three times the value of the property obtained, whichever is greater, or imprisonment for not more than three years, or both if the value of the property of another obtained by use of a credit card within a seven-day period is two hundred and fifty dollars or more and shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both, if the value of the property of another obtained by a credit card within a seven-day period is less than two hundred and fifty dollars.

Sec. 305. Forgery.

(a) Whoever makes, draws, or utters a forged written instrument with intent to defraud or injure another is guilty of forgery.

(b)(1) Forgery shall be punishable by a fine of not more than ten thousand dollars or imprisonment for not more

than seven years, or both, if the written instrument is or purports to be:

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

(B) a stock certificate, bond, or other instrument representing an interest in or claim against a corporate or other organization or its property; or

(C) a public record, or an instrument filed or required to be filed in or with a public officer or public servant; or

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

(E) a check which upon its face appears to be a payroll check; or

(F) 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

(G) a written instrument having a purported value in excess of $10,000.

(2) Forgery shall be punishable by a fine of not more than five thousand dollars or imprisonment for not more than

five years, or both, if the written instrument is or purports to be:

(A) 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; or

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

(C) a written instrument having a purported value in excess of $100 but not more than $10,000.

(3) Forgery shall be punishable by a fine of not more than twenty-five hundred dollars or imprisonment for not more than three years, or both, in any other case.

(c) For purposes of this section --

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

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

(B) contains a false addition thereto or insertion therein; or

(C) is a combination of parts of two or more genuine written instruments.

(2) The term "utter" means to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use or certify.

(3) The term "written instrument" includes any:

(A) security, as defined in D.C. Code, sec. 28:8-102(1)(a); or

(B) bill of lading, as defined in D.C. Code, sec. 28:1-201(6); or

(C) document of title, as defined in D.C. Code, sec. 28:1-201(15); or

(D) draft, check, certificate of deposit, and note, as defined in D.C. Code, sec. 28:3-104; or

(E) letter of credit, as defined in D.C. Code, sec. 28:5-103(1)(a); or

(F) stamp, legal tender, or other obligation of any domestic or foreign government or governmental entity; or

(G) 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 of any of the foregoing items; or

(H) commercial paper or document, any other commercial instrument containing written or printed matter or its equivalent; or

(I) other instrument commonly known as a security or defined as such by Act of Congress or a provision of the District of Columbia Code.

Sec. 306. Forgery of Objects.

(a) Whoever, with intent to defraud, makes or alters any object so that the object appears to have an antiquity, rarity, source or authorship that it does not in fact possess shall be fined not more than ten thousand dollars or three times the purported value of the object, whichever is greater, or imprisoned for not more than three years, or both.

(b) For purposes of this section, the term "object" includes a painting, sculpture, etching, engraving, antique, sound recording, photograph, coin, stamp, or consumer product.

Title IV.--Bribery and Related Offenses.

Sec. 401. Definitions for Bribery Offenses.

For the purposes of this title: 12.25

(a) the term "anything of value" means any gain or 12.27
advantage, or anything that might reasonably be regarded by 12.28
the beneficiary thereof as a gain or advantage. The term
does not include:

(1) concurrence in official action in the course 12.31
of legitimate compromise among public
servants; or

(2) a contribution or support under the election 12.34
laws for the political campaign of an elective
public servant when he is a candidate for 12.35
nomination or election to public office; or

(3) a gift in recognition of meritorious 12.38
achievement provided that there is complete
disclosure of the source and amount of any 12.39
such gift received; or

(4) a gift or other benefit conferred on a public 12.42
servant on account of kinship or a personal,
professional, or business relationship 12.43
independent of the official status of the
recipient; or

(5) a fee prescribed by law to be received by a 12.46
public servant or any other benefit to which
the public servant is lawfully entitled; or 12.47

(6) trivial benefits incidental to personal, professional, or business contacts which involve no substantial risk of undermining official impartiality; or

(7) a benefit conferred upon a part-time public servant by another employer.

(b) the term "official action" means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of the public servant.

(c) the term "official duty" means any required conduct that does not involve an exercise of discretion on the part of the public servant.

(d) the term "public servant" means any officer, employee, or other person authorized to act for or on behalf of the government of the District of Columbia. The term includes any person who has been elected, nominated, or appointed to be a public servant. The term shall not include an independent contractor.

(e) the term "recent public servant" means any person who has served as a public servant within one year preceding the date of the offense.

Sec. 402. Bribery.

Whoever--

(a) wilfully offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(b) wilfully solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant;

in return for an agreement or understanding that an official act of such public servant will be influenced thereby or that such public servant will violate an official duty shall be fined not more than ten thousand dollars or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than seven years, or both.

Sec. 403. Payoffs for Past Official Behavior.

Whoever--

(a) offers, gives or agrees to give anything of value to a public servant or recent public servant; or

(b) solicits, demands, accepts or agrees to accept anything of value as a public servant or recent public servant;

as compensation for such public servant or recent public servant having exercised his official powers or performed his official duties in favor of another shall be fined not

more than five thousand dollars or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned not more than five years, or both.

Sec. 404. Unlawful Gratuities.

(a) Whoever--

(1) is a public servant in an agency performing regulatory functions or conducting inspections or investigations and solicits, demands, accepts, or agrees to accept anything of value from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency; or

(2) is a public servant in an agency having custody of prisoners and solicits, demands, accepts or agrees to accept anything of value from a person the public servant knows to be in his custody or the custody of his agency; or

(3) is a public servant in an agency carrying on civil or criminal litigation on behalf of the government of the District of Columbia and solicits, demands, accepts, or agrees to accept anything of value from a person whom

the public servant knows has litigation pending or contemplated before the public servant or his agency; or

(4) is a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government of the District of Columbia and solicits, demands, accepts or agrees to accept anything of value from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving exercise of his discretion; or

(5) is a public servant who has judicial or administrative authority, or who is employed by or in a tribunal or agency having judicial or administrative authority, or who participates in the enforcement of the decisions of the tribunal or agency and solicits, demands, accepts or agrees to accept anything of value from a person the public servant knows is interested in or likely to be

interested in any matter before the public servant or tribunal; or

(6) is a public servant who is a member of or employed by the legislature or by an agency of the legislature and solicits, demands, accepts or agrees to accept anything of value from a person the public servant knows is interested in any matter pending before or contemplated by the legislature or agency of the legislature;

shall be fined not more than one thousand dollars or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than one year, or both.

(b) Whoever offers, gives, or agrees to give anything of value to a public servant that he knows the public servant is prohibited by law from accepting shall be fined not more than one thousand dollars or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than one year, or both.

Title V.--Perjury and Related Offenses.

Sec. 501. Perjury; False Statements; False Certificate of Acknowledgement.

(a) Section 858 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1329; D.C. Code, sec. 22-2501) is amended as follows:

(1) by designating this section as subsection "(a)";

(2) by striking the comma following the words "Every person who" and inserting "--(1)" in lieu thereof;

(3) by striking the words following the words "which he does not believe to be true" in the second sentence and inserting the words "and which is not in fact true;" in lieu thereof;

(4) by striking the third sentence in its entirety; and

(5) by adding the following words:

"(2) in any written and dated declaration, certificate, verification, or statement made under the penalty of perjury, wilfully subscribes as true any material matter within the jurisdiction of any department or agency of the government of the District of Columbia or any court of the District of Columbia, which he does not believe to be true and which is not in fact true; is guilty of perjury and shall, except as otherwise provided by law, be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.".

(D) Section 845 of An Act To establish a code for law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327, D.C. Code, sec. 22-1308) is amended as follows:

(1) by designating this section as subsection "(D)"; and

(2) by striking the phrase "imprisoned for not less than one year nor more than ten years." and inserting the phrase "fined not more than five thousand dollars and imprisoned for not more than ten years, or both.".

Sec. 502. Subornation of Perjury.

Whoever procures or induces another to commit any perjury is guilty of subornation of perjury and shall be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.

Title VI.--Amendments and Repealers.

Sec. 601. Amendments and Repealers.

(a) Section 861 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-701) is repealed.

(D) Section 1 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes, approved

July 1, 1902 (32 Stat. 591; D.C. Code, sec. 22-702) is amended by striking the following paragraph:

"That hereafter every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court.".

(c) Section 852 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-703(a)) is amended as follows:

(1) by adding the word "or" following the phrase "whoever corruptly,"; and

(2) by striking the phrase "duties, or," and inserting the phrase "duties, or corruptly, or" in lieu thereof.

(d) Section 1 of An Act To define the crime of bribery and to provide for its punishment, approved February 26, 1936 (49 Stat. 1143; D.C. Code, sec. 22-704) is repealed.

(e) Section 833 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1201) is repealed.

(f) Section 834 of An Act To establish a code of law for the District of Columbia, aporoved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1202) is repealed.

(g) Section 835 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1203) is repealed.

(h) Section 836 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1204) is repealed.

(i) Section 837 of An Act To establish a code of law for the District of Columbia, aporoved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1205) is repealed.

(j) Section 838 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1206) is repealed.

(k) Section 851a of An Act To establish a code of law for the District of Columbia, approved March 3, 1913 (37 Stat. 727; D.C. Code, sec. 22-1207) is repealed.

(l) Section 1 of An act to prevent fraudulent transactions on the part of commission merchants and other consignees of goods and other property in the District of Columbia, approved March 21, 1892 (27 Stat. 10; D.C. Code, sec.22-1208) is repealed.

(m) Section 839 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1209) is repealed.

(n) Section 841 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1210) is repealed.

(o) Section 1 of An Act To amend "An Act for the preservation of the public peace and protection of property in the District of Columbia," approved July twenty-ninth, eighteen hundred and ninety-two, approved July 8, 1893 (30 Stat. 724; D.C. Code, sec. 22-1211) is repealed.

(p) Section 843 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1401) is repealed.

(q) Section 1 of An Act To prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 662; D.C. Code, sec. 22-1407) is repealed.

(r) Section 2 of An Act to prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal

receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 15, 1937 (50 Stat. 663; D.C. Code, sec. 22-1408) is repealed.

(s) Section 3 of An Act to prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin

contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 663; D.C. Code, sec. 22-1409) is repealed.

(t) Section 826 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2201) is repealed.

(u) Section 827 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2202) is repealed.

(v) Section 851b of An Act To establish a code of law for the District of Columbia, approved March 3, 1913 (37 Stat. 727; D.C. Code, sec. 22-2203) is repealed.

(w) Section 826c of An Act To establish a code of law for the District of Columbia, approved March 7, 1942 (56 Stat. 143; D.C. Code, sec. 22-2204a) is repealed.

(x) Section 829 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2205) is repealed.

(y) Section 831 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2206) is repealed.

(z) Section 832 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-2207) is repealed.

(aa) Section 828 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2208) is repealed.

(bb) Section 815 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2301) is repealed.

(cc) Section 816 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2302) is repealed.

(dd) Section 817 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2303) is repealed.

(ee) Section 819 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323, D.C. Code, sec. 22-2305) is repealed.

(ff) Section 1501 of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 238; D.C. Code, sec. 22-2306) is repealed.

(qq) Section 1180 of the Revised Statutes of the District of Columbia (D.C. Code, sec. 22-2502) is repealed.

(hh) Section 849 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Code, sec. 22-3106) is amended by striking the phrase "steal," wherever it appears.

(ii) Section 825a of An Act To amend an Act entitled "An Act to establish a code of law for the District of Columbia", approved June 30, 1902 (32 Stat. 534; D.C. Code, sec. 22-3115) is repealed.

(jj) Section 15 of An act regulating gas-works, approved June 23, 1874 (18 Stat. 280; D.C. Code, sec. 22-3116) is repealed.

(kk) Section 1 of An act to prevent fraud upon the water revenues of the District of Columbia, approved April 5, 1892 (27 Stat. 14; D.C. Code, sec. 22-3117) is repealed.

(ll) Section 1 of An Act to regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3404) is repealed.

(mm) Section 2 of An Act to regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3405) is repealed.

(nn) Section 3 of An Act to regulate the sale of kosher meat in the District of Columbia, approved April 15, 1925 (44 Stat. 253; D.C. Code, sec. 22-3406) is repealed.

(oo) Section 1 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3409) is repealed.

(pp) Section 2 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3410) is repealed.

(qq) Section 3 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3411) is repealed.

(rr) Section 4 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3412) is repealed.

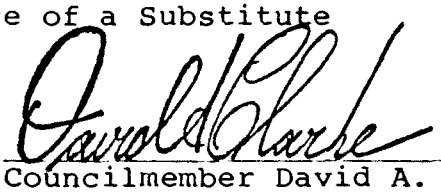
(ss) Section 1179 of the Revised Statutes of the District of Columbia (D.C. Code, sec. 22-3413) is repealed.

Title VII.--Effective Date.

Sec. 701. Effective Date. This act shall take effect after a thirty (30)-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of

the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-147(c)(2)). 19.39

Committee Print
June 1, 1982
An Amendment in the Nature of a Substitute



Councilmember David A. Clarke

A REPORTED BILL

4-133

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember David A. Clarke introduced the following bill, which was referred to the Committee on the Judiciary.

To reform the criminal laws of the District of Columbia relating to theft, receipt of stolen property, fraud, forgery, extortion, blackmail, bribery, prejury, obstruction of justice and criminal libel; and for other purposes.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Theft and White Collar Crimes Act of 1982".

Title I. Theft and Fraud Offenses.

SUBTITLE 1. General Provisions.

Sec. 101. General Definitions.

For the purposes of this title, the term:

(1) "Appropriate" means to take or make use of without authority or right.

(2) "Deprive" means:

(A) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value; or

(B) to dispose of the property, or use or

deal with the property so as to make it unlikely that the owner will recover it.

(3) "Property" means anything of value, and 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; and (C) services.

(4) "Property of another" means any property in which a government or a person other than the accused has an interest which the accused is not privileged to interfere with or infringe without consent, regardless of whether the accused also has an interest in that property, and includes the property of a corporation or other legal entity established pursuant to an interstate compact. The term "property of another" does not include any property in the possession of the accused as to which any other person has only a security interest.

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

(A) labor, whether professional or nonprofessional;

(B) the use of vehicles or equipment;

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

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

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

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

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

Sec. 102. Aggregation.

Amounts received pursuant to a single scheme or systematic course of conduct in violation of sections 112 (Theft), 121 (Fraud), or 123 (Credit Card Fraud) may be aggregated in determining the grade of the offense and the sentence of the offense, except that with respect to credit card fraud only amounts received within a consecutive 7-day period maybe aggregated.

Sec. 103. Duplicative Offenses.

No person shall be consecutively sentenced for both:

(a) theft and fraud;

(b) theft and unauthorized use of a vehicle;

(c) theft and commercial piracy;

for the same act or course of conduct.

SUBTITLE 2. Theft and Related Offenses.

Sec. 111. Theft.

(a) For the purpose of this section, the term "wrongfully obtains or uses" means:

(1) taking or exercising control over property;

(2) making an unauthorized use, disposition, or transfer of an interest in or possession of property; or

(3) obtaining property by trick, false pretense, false token, tampering or deception;

and includes conduct previously known as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.

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

(1) to deprive the other of a right to the property or a benefit of the property; or

(2) to appropriate the property to his or her own use or to the use of a third person.

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

Sec. 112. Penalties of Theft.

(a) Theft in the 1st degree. Any person convicted of theft shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both, if the value of the property obtained or used is $250 or more.

(b) Theft in 2nd degree. Any person convicted of theft shall be fined not more than $1,000 or imprisoned for not

more than 1 year, or both, if the value of the property obtained or used is less than $250.

Sec. 113. Shoplifting.

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

(1) knowingly conceals or takes possession of any such property;

(2) knowingly removes or alters the price tag, serial number, or other identification mark that is imprinted on or attached to such property; or

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

(b) Any person convicted of shoplifting shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

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

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

arising out of such detention or arrest, if:

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

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

(3) law enforcement authorites 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.

Sec. 114. Commercial Piracy.

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

(1) "Owner" with respect to phonorecords or copies means the person who owns the original fixation of the property involved, except that in the case of a live performance the term means the performer or performers.

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

(3) "Phonorecords" means material objects in which sounds, other than those accompanying a motion picture or

other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

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

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

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

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

(d) Penalty. Any person convicted of commercial piracy shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

Sec. 115. Unauthorized Use of Motor Vehicles.

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

(b) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, without the consent of the owner, that person takes, uses, operates, or removes or causes to be taken, used, operated, or removed, a motor vehicle from a garage, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, enclosure, or space, and operates or drives or causes the motor vehicle to be operated or driven for his or her own profit, use, or purpose. Any person convicted of unauthorized use of a motor vehicle under this subsection shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

(c)(1) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, after renting, leasing, or using a motor vehicle under a written agreement which provides for the return of the motor vehicle to a particular place at a specified time, that person knowingly fails to return the motor vehicle to that place (or to any

authorized agent of the party from whom the motor vehicle was obtained under the agreement), within 18 days after written demand is made for its return, if the conditions set forth in paragraph (2) are met. Any person convicted of unauthorized use of a motor vehicle under this subsection shall be fined not more than $1,000 or imprisoned for not more than 3 years, or both.

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

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

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

(C) The party from whom the motor vehicle was obtained under the agreement makes a written demand for the return of the motor vehicle, either by actual delivery to the person who obtained the motor vehicle, or by deposit in the United States mail of a postpaid registered or certified letter, return receipt requested, addressed to the person at

each address set forth in the written agreement or otherwise provided by the person. The written demand shall clearly state that failure to return the motor vehicle may result in prosecution for violation of the criminal law of the District of Columbia punishable by up to 3 years in jail. The written demand shall not be made prior to the date specified in the agreement for the return of the motor vehicle, except that, if the parties or their authorized agents have mutually agreed to some other date for the return of the motor vehicle, then the written demand shall not be made prior to the other date.

(3) This subsection shall not apply in the case of a motor vehicle obtained under a retail installation contract as defined in paragraph (9) of section 1 of An Act of April 22, 1960 (74 Stat. 69; D.C. Code, sec. 40-1101).

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

was for causes beyond his or her control.

Sec. 116. Taking Property Without Right.

A person commits the offense of taking property without right if that person takes and carries away the property of another without right to do so. A person convicted of taking property without right shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

SUBTITLE 3. Fraud and Related Offenses.

Sec. 121. Fraud.

(a) Fraud in the 1st degree.

A person commits the offense of fraud in the 1st degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtains property of another or causes another to lose property.

(b) Fraud in the 2nd degree.

A person commits the offense of fraud in the 2nd degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.

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

Sec. 122. Penalties for Fraud.

(a) Fraud in the 1st degree.

(1) Any person convicted of fraud in the 1st degree shall be fined not more than $5,000 or 3 times the value of the property obtained or lost, whichever is greater, or imprisoned for not more than 10 years, or both, if the value of the property obtained or lost is $250 or more; and

(2) Any person convicted of fraud in the 1st degree shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both, if the value of the property obtained or lost was less than $250.

(b) Fraud in the 2nd degree.

(1) Any person convicted of fraud in the 2nd degree shall be fined not more than $3,000 or 3 times the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than 3 years, or both, if the value of the property which was the object of the scheme or systematic course of conduct was $250 or more; and

(2) Any person convicted of fraud in the 2nd degree shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both, if the value of the property which was the object of the scheme or systematic course of conduct was less than $250.

Sec. 123. Credit Card Fraud.

(a) For the purpose of this section the term "credit

card" means an instrument or device, whether known as a credit card plate, debit card, or by any other name, issued by an issuer for use of the cardholder in obtaining property or services.

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

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

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

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

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

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

(d) Penalties.

(1) Any person convicted of credit card fraud shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both, if the value of the property obtained is $250 or more.

(2) Any person convicted of credit card fraud

shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both, if the value of the property obtained is less than $250.

Sec. 124. Fraudulent Registration.

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

(b) Any person convicted of fraudulent registration shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

SUBTITLE 4. Dealing in Stolen Property.

Sec. 131. Trafficking in Stolen Property.

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

(1) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of property to another person as consideration for anything of value; or

(2) to buy, receive, possess, or obtain control of property with intent to do any of the acts set forth in paragraph (1).

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

(c) It shall not be a defense to a prosecution under this section that the property was not in fact stolen.

(d) Any person convicted of trafficking in stolen property shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

Sec. 132. Receiving Stolen Property.

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

(b) It shall not be a defense to a prosecution for an attempt to commit the offense described in this section that the property was not in fact stolen.

(c) Penalties.

(1) Any person convicted of receiving stolen property shall be fined not more than $5,000 or imprisoned not more than 7 years, or both, if the value of the stolen property is $250 or more.

(2) Any person convicted of receiving stolen property shall be fined not more than $1,000 or imprisoned not more than 1 year, or both, if the value of the stolen property is less than $250.

SUBTITLE 5. Forgery.

Sec. 141. Forgery.

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

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

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

(B) contains a false addition or insertion; or

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

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

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

(A) security, bill of lading, document of title, draft, check, certificate of deposit, and letter of credit, as defined in title 28, D.C. Code;

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

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

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

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

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

Sec. 142. Penalties for Forgery.

(a) Any person convicted of forgery shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both, if the written instrument purports to be:

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

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

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

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

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

(6) a deed, will, codicil, contract, assignment,

commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or

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

(b) Any person convicted of forgery shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both, if the written instrument is or purports to be:

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

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

(3) a written instrument having a value of $250 or more.

(c) Any person convicted of forgery shall be fined not more than $2,500 or imprisoned for not more than 3 years, or both, in any other case.

SUBTITLE 6. Extortion.

Sec. 151. Extortion.

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

(1) that person obtains or attempts to obtain the property of another, with the other's consent, which was

induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury; or

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

(b) Any person convicted of extortion shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

Sec. 152. Blackmail.

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

(1) to accuse any person of a crime;

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

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

(b) Any person convicted of blackmail shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

Title II. Enhanced Penalty.

Sec. 201. Enhanced Penalty--Senior Citizen Victims.

(a) Any person who commits any offense listed in subsection (b) against an individual who is 60 years of age or older, at the time of the offense, may be punished by a fine of up to 1 1/2 times the maximum fine otherwise

authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) The provisions of subsection (a) shall apply to the following offenses: robbery, attempted robbery, theft, attempted theft, extortion, fraud in the 1st degree, and fraud in the 2nd degree.

(c) It is an affirmative defense that the accused knew or reasonably believed that the victim was not 60 years of age or older at the time of the offense.

Title III. Bribery Offenses.

Sec. 301. Definitions for Bribery Offenses.

For the purposes of this title, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Juror" means any grand, petit, or other juror, or any person selected or summoned as a prospective juror of the District of Columbia.

(3) "Official action" means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of the public servant.

(4) "Official duty" means any required conduct that does not involve an exercise of discretion on the part of the public servant.

(5) "Official proceeding" means any trial,

hearing, or other proceeding in any court of the District of Columbia, or in any agency or department of the District of Columbia government.

(6) "Public servant" means any officer, employee, or other person authorized to act for or on behalf of the District of Columbia government. The term "public servant" includes any person who has been elected, nominated, or appointed to be a public servant or a juror. The term "public servant" does not include an independent contractor.

Sec. 302. Bribery.

(a) A person commits the offense of bribery if, that person:

(1) corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(2) corruptly solicits, demands, accepts or agrees to accept anything of value, directly or indirectly, as a public servant;

in return for an agreement or understanding that an official act of such public servant will be influenced thereby or that such public servant will violate an official duty, or that such public servant will commit, aid in committing or will collude in or allow any fraud against the District of Columbia.

(b) Nothing in this section shall be construed as prohibiting concurrence in official action in the course of legitimate compromise between public servants.

(c) Any person convicted of bribery shall be fined not more than $25,000 or 3 times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than 10 years, or both.

Sec. 303. Bribery of a Witness.

(a) A person commits the offense of bribery of a witness if that person:

(1) corruptly offers, gives, or agrees to give to another person; or

(2) corruptly solicits, demands, accepts, or agrees to accept from another person;

anything of value in return for an agreement or understanding that the testimony of the recipient will be influenced in an official proceeding before any court of the District of Columbia or any agency or department of the District of Columbia government, or that the recipient will absent himself from such proceedings.

(b) Nothing in subsection (a) shall be construed to prohibit the payment or receipt of witness fees provided by law, or the payment by the party upon whose behalf a witness is called and receipt by a witness of a reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such proceeding, or, in the case of expert witnesses, a reasonable fee for time spent in the preparation of a technical or professional opinion and appearing and testifying.

(c) Any person convicted of bribery of a witness shall

be fined not more than $2,500 or imprisoned for not more than 5 years, or both.

Title IV. Perjury and Related Offenses.

Sec. 401. Perjury.

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

(1) having taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered, that he or she will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by that person subscribed is true, wilfully and contrary to an oath or affirmation states or subscribes any material matter which he does not believe to be true and which in fact is not true; or

(2) as a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully certifies falsely as to another material matter in an acknowledgement.

(b) Any person convicted of perjury shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both.

Sec. 402. Subornation or Perjury.

A person commits the offense of subornation of perjury if that person wilfully procures another to commit perjury. Any person convicted of subornation of perjury shall be

fined not more than $5,000 or imprisoned for not more than 10 years, or both.

Sec. 403. False Swearing.

(a) A person commits the offense of false swearing if under oath or affirmation he or she wilfully makes a false statement, in writing, that is in fact material and the statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(b) Any person convicted of false swearing shall be fined not more than $2,500 or imprisoned for not more than 3 years, or both.

Sec. 404. False Statements.

(a) A person commits the offense of making false statements if that person wilfully makes a false statement that is in fact material, in writing, directly or indirectly, to any instrumentality of the District of Columbia government, under circumstances in which the statement could reasonably be expected to be relied upon as true: PROVIDED, That the writing indicates that the making of a false statement is punishable by criminal penalties. Any person convicted of making false statements shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both.

Title V. Obstruction of Justice.

Sec. 501. Definitions for Obstruction of Justice.

For the purpose of this title, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Criminal investigator" means an individual authorized by the Mayor or the Mayor's designated agent to conduct or engage in a criminal investigation, or a prosecuting attorney conducting or engaged in a criminal investigation.

(3) "Criminal investigation" means an investigation to a violation of any criminal statute in effect in the District of Columbia.

(4) "Official proceeding" means any trial, hearing or other proceeding in any court of the District of Columbia or any agency or department of the District of Columbia government.

Sec. 502. Obstruction of Justice.

(a) A person commits the offense of obstruction of justice if that person:

(1) corruptly, or by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court of the District of Columbia in the discharge of his or her duties;

(2) corruptly, by threats or force, in any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any court of the District of Columbia;

(3) wilfully endeavors by means of bribery,

misrepresentation, intimidation, or threats or force to obstruct, delay, or prevent the communication to an investigator of the District of Columbia by any person of information relating to a violation of any criminal statute in effect in the District of Columbia;

(4) injures any person or his or her property on account of the person or any other person giving information related to a violation of any criminal statute in effect in the District of Columbia to a criminal investigator in the course of any criminal investigation; or

(5) injures any person or his or her property on account of the person or any other person performing his official duty as a juror, witness, or officer in any court in the District of Columbia.

(b) Any person convicted of obstruction of justice shall be fined not more than $1,000 or imprisoned for not more than 3 years, or both.

Sec. 503. Tampering with Physical Evidence.

(a) A person commits the offense of tampering with physical evidence if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.

(b) Any person convicted of tampering with physical

evidence shall be fined not more than $1,000 or imprisoned for not more than 3 years, or both.

Title VI. Amendments and Repealers.

Sec. 601. Amendments.

(a) D.C.Code, sec. 16-708 is amended by striking the phrase "embezzlement, shall be fined not more than $5000 or imprisoned not more than 5 years, or both." and inserting the phrase "theft, and shall be punished in the manner prescribed by law for such offense." in lieu thereof.

(b) Section 904 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1336; D.C. Code, sec. 22-101) is amended by inserting following the word "Except" the the phrase "where otherwise provided for".

(c) Section 905 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1336; D.,C. Code, sec. 22-102) is amended by striking the phrase "The words" and inserting the phrase "Except as otherwise provided, the words" in lieu thereof.

(d) Section 849 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Code, sec. 22-3106) is amended by striking the word "steal," wherever it appears.

(e) Section 1 of An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes,

approved July 8, 1932 (47 Stat. 650; D.C. Code, sec. 22-3201) is amended by striking the word "larceny".

(f) D.C. Code, sec. 23-546 is amended as follows:

(1) subsection (c)(1) is amended by striking the following phrases:

(A) "Blackmail...section 819 (D.C. Code, sec. 22-2305).";

(B) "Bribery...section 816 (D.C. Code, sec. 22-701).";

(A) "Grand Larceny...section 826 (D.C. Code, sec. 22-2201).";

(D) "Obstruction of justice...section 826 (D.C. Code, sec. 22-703)."; and

(E) "Receiving stolen property of value in excess of $100...section 829 (D.C. Code, sec 22-2205).");

(2) subsection (c)(2) is amended by striking the following phrase, "(A) in the second paragraph under the center reading "General Expenses" in the first section of the Act of July 1, 1902 (D.C. Code, sec. 22-702), and (B)".

(3) subsection (c)(3) is amended by:

(A) striking the phrase "Extortion and threats" and inserting the word "Threats" in lieu thereof, and

(B) striking the phrase "sections 1501 and 1502" and inserting the phrase "section 1501" in lieu thereof;

(4) subsection (c)(4) is amended to read as

follows:

"(4) Offenses involving the manufacture, distribution or possession with intent to manufacture or distribute controlled substances as specified in sections 401 through 403 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Code, sec. 33-441 through -443).";

and

(5) by adding a new paragraph (5) at the end thereof to read as follows:

"(5) Any of the offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

"Offense	Specified in -
"Extortion	section 151.
"Blackmail	section 152.
"Bribery	section 302.
"Obstruction of Justice	section 502.
Receiving stolen property of value in excess of $250	section 132.
"Theft of property of value in excess of $250	section 111.
"Trafficking in stolen property	section 131.".

(g) D.C. Code, sec. 23-581 is amended as follows:

(1) subsection (a)(2)(A) is amended by striking the following phrases:

(A) "Petit Larceny....section 827 (D.C. Code, sec. 22-2202).";

and

(B) "Receiving stolen goods....section 829 (D.C. Code, sec. 22-2205)."

(2) subsection (a)(2)(B) is amended to read as follows:

"(B) Attempts to commit burglary as specified in section 823 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-1801.";

(3) by adding the following new subparagraphs (C) and (D) at the end of subsection (a)(2)to read as follows:

"(C) The following offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

"Offense:	Specified in -
"Theft of property valued less than $250	section 111.
"Receiving stolen property	section 132.

"(D) Attempts to commit the following offenses specified in the Act and listed in the following table:

"Offense:	Specified in -
"Theft of property valued in excess of $250	section 111.
"Unauthorized use of vehicles	section 115.".

(h) Section 732 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1307; D.C. Code, sec. 26-420) is amended by striking

the word "larceny" amd inserting the word "theft" in lieu thereof.

(i) Section 691 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1299; D.C. Code, sec. 26-504(c)) is amended by striking the word "larceny" and inserting the word "theft" in lieu thereof.

Sec. 602. Repealers.

(a) D.C. Code, sec. 23-314 is repealed.

(b) Section 861 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-701) is repealed.

(c) The following paragraph of section 1 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes, approved July 1, 1902 (32 Stat. 591; D.C. Code, sec. 22-702) is repealed:

"That hereafter every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or

aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court.".

(d) Section 862 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-703) is repealed .

(e) Section 833 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1201) is repealed.

(f) Section 834 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1202) is repealed.

(g) Section 835 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1203) is repealed.

(h) Section 836 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1204) is repealed.

(i) Section 837 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1205) is repealed.

(j) Section 838 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31

Stat. 1325; D.C. Code, sec. 22-1206) is repealed.

(k) Section 851a of An Act To establish a code of law for the District of Columbia, approved March 3, 1913 (37 Stat. 727; D.C. Code, sec. 22-1207) is repealed.

(l) Section 1 of An act to prevent fraudulent transactions on the part of commission merchants and other consignees of goods and other property in the District of Columbia, approved March 21, 1892 (27 Stat. 10; D.C. Code, sec.22-1208) is repealed.

(m) Section 839 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1209) is repealed.

(n) Section 841 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1210) is repealed.

(o) Section 1 of An Act To amend "An Act for the preservation of the public peace and protection of property in the District of Columbia," approved July twenty-ninth, eighteen hundred and ninety-two, approved July 8, 1893 (30 Stat. 724; D.C. Code, sec. 22-1211) is repealed.

(p) Section 842 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-1301) is repealed.

(q) Chapter 949 of An Act To prevent the unlawful wearing of the badge or insigna of the Grand Army of the Republic or other soldier organizations, approved March 15, 1906 (34 Stat. 62; D.C. Code, sec. 22-1307) is repealed.

(r) Section 845 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Code, sec. 22-1308) is repealed.

(s) Section 843 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1401) is repealed.

(t) Section 830a of An Act To establish a code for the District of Columbia, approved April 19, 1920 (41 Stat. 567; D.C. Code, sec. 22-1404) is repealed.

(u) Section 840 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1405) is repealed.

(v) Section 1 of An Act To prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle;

and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 662; D.C. Code, sec. 22-1407) is repealed.

(w) Section 2 of An Act To prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 663; D.C. Code, sec. 22-1408) is repealed.

(x) Section 3 of An Act to prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in

connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 663; D.C. Code, sec. 22-1409) is repealed.

(y) Section 826 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2201) is repealed.

(z) Section 827 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2202) is repealed.

(aa) Section 851b of An Act To establish a code of law for the District of Columbia, approved March 3, 1913 (37 Stat. 727; D.C. Code, sec. 22-2203) is repealed.

(bb) Section 826b of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (37 Stat. 656; D.C. Code, sec. 22-2204) is repealed.

(cc) Section 826c of An Act To establish a code of law for the District of Columbia, approved March 7, 1942 (56 Stat. 143; D.C. Code, sec. 22-2204a) is repealed.

(dd) Section 829 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2205) is repealed.

(ee) Section 831 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2206) is repealed.

(ff) Section 832 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-2207) is repealed.

(gg) Section 828 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2208) is repealed.

(hh) Section 815 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2301) is repealed.

(ii) Section 816 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2302) is repealed.

(jj) Section 817 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2303) is repealed.

(kk) Section 818 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C.Code, sec. 22-2304) is repealed.

(ll) Section 819 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323, D.C. Code, sec. 22-2305) is repealed.

(mm) Section 1501 of the Omnibus Crime Control and Safe Streets Act of 1968 approved June 19, 1968 (82 Stat. 238; D.C. Code, sec. 22-2306) is repealed.

(nn) Section 858 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1329; D.C. Code, sec. 22-2501) is repealed.

(oo) R.S.D.C., sec. 1180 (D.C. Code, sec. 22-2602) is repealed.

(pp) Section 826a of An Act To amend an Act entitled "An Act to establish a code of law for the District of Columbia", approved June 30, 1902 (32 Stat. 534; D.C. Code, sec. 22-3115) is repealed.

(qq) Section 15 of An act regulating gas-works, approved June 23, 1874 (18 Stat. 280; D.C. Code, sec. 22-3116) is repealed.

(rr) Section 1 of An act to prevent fraud upon the water revenues of the District of Columbia, approved April 5, 1892 (27 Stat. 14; D.C. Code, sec. 22-3117) is repealed.

(ss) Section 1 of An Act to regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3404) is repealed.

(tt) Section 2 of An Act to regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3405) is repealed.

(uu) Section 3 of An Act to regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3406) is repealed.

(vv) Section 1 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3409) is repealed.

(ww) Section 2 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3410) is repealed.

(xx) Section 3 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3411) is repealed.

(yy) Section 4 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3412) is repealed.

(zz) R.S.D.C., sec. 1179 (D.C. Code, sec. 22-3413) is repealed.

(aaa) Section 50 of An Act to make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 309; D.C. Code, sec. 22-3701) is repealed.

(bbb) Section 51 of An Act to make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 309; D.C. Code, sec. 22-3702) is repealed.

(ccc) Section 52 of An Act to make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 309; D.C. Code, sec. 22-3703) is repealed.

(ddd) Section 53 of An Act to make uniform the law of

warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 310; D.C. Code, sec. 22-3704) is repealed.

(eee) Section 54 of An Act to make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 310; D.C. Code, sec. 22-3705) is repealed.

(fff) Section 55 of An Act to make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 310; D.C. Code, sec. 22-3706) is repealed.

Title VII. Applicability and Effective Date.

Sec. 701. Applicability and Effective Date.

(a) The provisions of this act shall apply only to offenses committed on or after the effective date of this act. An offense is committed after the effective date of this act only if all elements of the offense occured after the effective date. Prosecutions for offenses committed prior to the effective date of this act shall be governed by the prior law, which is continued in effect for that purpose as if this act was not in force.

(b) This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act,

approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(2)).

DC 4-164

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 4-164

"District of Columbia Theft and White Collar Crimes Act of 1982".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 4-133 on first, amended first and second readings, June 22, 1982, July 6, 1982 and July 20, 1982, respectively. Following the signature of the Mayor on August 4, 1982, this legislation was assigned Act No. 4-238, published in the September 10, 1982, edition of the D.C. Register, (Vol. 29 page 3976) and transmitted to Congress on August 9, 1982 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 4-164, effective December 1, 1982.

Arrington L. Dixon

ARRINGTON DIXON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

August 9,10,11,12,13,16,17,18,19,20

September 8,9,10,13,14,15,16,17,20,21,22,23,24,27,28,29,30

October 1

November 29,30

D.C. LAW 4-164

Enrolled Origina

EFFECTIVE DATE DEC 0 1 1982

AN ACT

D.C. ACT 4-238

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUG 0 4 1982

To reform the criminal laws of the District of Columbia relating to theft, receipt of stolen property, fraud, forgery, extortion, blackmail, bribery, prejury, obstruction of justice, and criminal libel; and for other purposes.

TABLE OF CONTENTS

CODIFICATION
D.C.Code, title 22, new chapter 38 (1981 ed.)

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Theft and White Collar Crimes Act of 1982".

Title I. Theft and Fraud Provisions.

D.C.Code, title 22, new chapter 3 subchapter I

Subtitle 1. General Provisions.

Sec. 101. General Definitions.

New D.C.Code, sec. 22-3801 (1981 ed.)

For the purposes of this title, the term:

(1) "Appropriate" means to take or make use of without authority or right.

(2) "Deprive" means:

(A) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value; or

(B) to dispose of the property, or use or deal with the property so as to make it unlikely that the owner will recover it.

(3) "Property" means anything of value. The term "property" includes, but is not limited to: (A) real property, including things growing on, affixed to, or found on land; (B) tangible or intangible personal property; and (C) services.

(4) "Property of another" means any property in

which a government or a person other than the accused has an interest which the accused is not privileged to interfere with or infringe upon without consent, regardless of whether the accused also has an interest in that property. The term "property of another" includes the property of a corporation or other legal entity established pursuant to an interstate compact. The term "property of another" does not include any property in the possession of the accused as to which any other person has only a security interest.

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

(A) labor, whether professional or nonprofessional;

(B) the use of vehicles or equipment;

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

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

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

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

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

Sec. 102. Aggregation.

Amounts received pursuant to a single scheme or systematic course of conduct in violation of sections 112 (Theft), 121 (Fraud), or 123 (Credit Card Fraud) may be aggregated in determining the grade of the offense and the sentence for the offense, except that with respect to credit card fraud only amounts received within a consecutive 7-day period may be aggregated.

New D.C.Code, sec. 22-38((1981 ed.)

Sec. 103. Duplicative Offenses.

No person shall be consecutively sentenced for both:

New D.C.Code, sec. 22-38((1981 ed.)

(a) theft and fraud;

(b) theft and unauthorized use of a vehicle; or

(c) theft and commercial piracy;

for the same act or course of conduct.

Subtitle 2. Theft and Related Offenses.

D.C.Code, title 22, new chapter subchapter

Sec. 111. Theft.

(a) For the purpose of this section, the term "wrongfully obtains or uses" means:

New D.C.Code, sec. 22-381 (1981 ed.)

(1) taking or exercising control over property;

(2) making an unauthorized use, disposition, or transfer of an interest in or possession of property; or

(3) obtaining property by trick, false pretense, false token, tampering, or deception. The term "wrongfully obtains or uses" includes conduct

previously known as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.

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

(1) to deprive the other of a right to the property or a benefit of the property; or

(2) to appropriate the property to his or her own use or to the use of a third person.

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

Sec. 112. Penalties for Theft.

(a) Theft in the 1st degree. Any person convicted of theft shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both, if the value of the property obtained or used is $250 or more.

New D.C.Code, sec. 22-3 (1981 ed.)

(b) Theft in 2nd degree. Any person convicted of theft shall be fined not more than $1,000 or imprisoned

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for not more than 1 year, or both, if the value of the property obtained or used is less than $250.

Sec. 113. Shoplifting.

New D.C.Code, sec. 22-3 (1981 ed.

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

(1) knowingly conceals or takes possession of any such property;

(2) knowingly removes or alters the price tag, serial number, or other identification mark that is imprinted on or attached to such property; or

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

(b) Any person convicted of shoplifting shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

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

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

if:

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

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

(3) law enforcement authorites 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.

Sec. 114. Commercial Piracy

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

D.C.Code, sec. 22-381 (1981 ed.)

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

(2) "Proprietary information" means customer lists, mailing lists, formulas, recipes, computer programs, unfinished designs, unfinished works of art in any medium, process, program, invention, or any other information, the primary commercial value of

which may diminish if its availability is not restricted.

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

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

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

(1) copying or other reproduction that is in the manner specifically permitted by title 17 of the

United States Code; or

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

(d) Any person convicted of commercial piracy shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

Sec. 115. Unauthorized Use of Motor Vehicles.

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

New D.C.Code sec. 22- (1981 ed

(b) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, without the consent of the owner, that person takes, uses, operates, or removes or causes to be taken, used, operated, or removed, a motor vehicle from a garage, other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, enclosure, or space, and operates or drives or causes the motor vehicle to be operated or driven for his or her own profit, use, or purpose.

(c)(1) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, after renting, leasing, or using a motor vehicle under a written agreement which provides for the return of the motor vehicle to a particular place

at a specified time, that person knowingly fails to return the motor vehicle to that place (or to any authorized agent of the party from whom the motor vehicle was obtained under the agreement) within 18 days after written demand is made for its return, if the conditions set forth in paragraph (2) are met.

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

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

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

(C) The party from whom the motor vehicle was obtained under the agreement makes a written demand for the return of the motor vehicle, either by actual delivery to the person who obtained the motor vehicle, or by deposit in the United States mail of a postpaid registered or certified letter,

return receipt requested, addressed to the person at each address set forth in the written agreement or otherwise provided by the person. The written demand shall state clearly that failure to return the motor vehicle may result in prosecution for violation of the criminal law of the District of Columbia punishable by up to 3 years in jail. The written demand shall not be made prior to the date specified in the agreement for the return of the motor vehicle, except that, if the parties or their authorized agents have mutually agreed to some other date for the return of the motor vehicle, then the written demand shall not be made prior to the other date.

(3) This subsection shall not apply in the case of a motor vehicle obtained under a retail installation contract as defined in section 1(9) of An Act To provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes, approved April 22, 1960 (74 Stat. 69; D.C. Code, sec. 40-1101).

(4) It shall be a defense in any criminal proceeding brought under this subsection that a person failed to return a motor vehicle for causes beyond his or her control. The burden of raising and going forward with the evidence with respect to such a defense shall be on the person asserting it. In any case in which such a defense is raised, evidence that the person obtained the motor vehicle by reason of any

false statement or representation of material fact, including a false statement or representation regarding his or her name, residence, employment, or operator's license, shall be admissible to determine whether the failure to return the motor vehicle was for causes beyond his or her control.

(d)(1) Any person convicted of unauthorized use of a motor vehicle under subsection (b) shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

(2) Any person convicted of unauthorized use of a motor vehicle under subsection (c) shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

Sec. 116. Taking Property Without Right

A person commits the offense of taking property without right if that person takes and carries away the property of another without right to do so. A person convicted of taking property without right shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

New
D.C.Code,
sec. 22-3816
(1981 ed.)

Subtitle 3. Fraud and Related Offenses.

D.C.Code,
title 22,
new chapter
subchapter T

Sec. 121. Fraud.

(a) Fraud in the 1st degree.

A person commits the offense of fraud in the 1st degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent

New
D.C.Code,
sec. 22-3821
(1981 ed.)

pretense, representation, or promise and thereby obtains property of another or causes another to lose property.

(b) Fraud in the 2nd degree.

A person commits the offense of fraud in the 2nd degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.

(c) Fraud may be committed by means of false promise as to future performance which the accused does not intend to perform or knows will not be performed. An intent or knowledge shall not be established by the fact alone that 1 such promise was not performed.

Sec. 122. Penalties for Fraud.

(a) Fraud in the 1st degree.

New D.C.Code, sec. 22-3822 (1981 ed.)

(1) Any person convicted of fraud in the 1st degree shall be fined not more than $5,000 or 3 times the value of the property obtained or lost, whichever is greater, or imprisoned for not more than 10 years, or both, if the value of the property obtained or lost is $250 or more; and

(2) Any person convicted of fraud in the 1st degree shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both, if the value of the property obtained or lost was less than $250.

(b) Fraud in the 2nd degree.

number or description thereof, which has been revoked or cancelled;

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

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

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

(d) Penalties.

(1) Any person convicted of credit card fraud shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both, if the value of the property obtained is $250 or more.

(2) Any person convicted of credit card fraud shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both, if the value of the property obtained is less than $250.

Sec. 124. Fraudulent Registration.

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

New D.C.Code, sec. 22-38 (1981 ed.)

(1) Any person convicted of fraud in the 2nd degree shall be fined not more than $3,000 or 3 times the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than 3 years, or both, if the value of the property which was the object of the scheme or systematic course of conduct was $250 or more; and

(2) Any person convicted of fraud in the 2nd degree shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both, if the value of the property which was the object of the scheme or systematic course of conduct was less than $250.

Sec 123. Credit Card Fraud.

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

New
D.C.Code,
sec. 22-3823
(1981 ed.)

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

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

(2) knowingly using a credit card, or the

(b) Any person convicted of fraudulent registration shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

Subtitle 4. Dealing in Stolen Property.

D.C.Code, title 22, new chapter subchapter

Sec. 131. Trafficking in Stolen Property.

New D.C.Code, sec. 22-383 (1981 ed.)

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

(1) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of property to another person as consideration for anything of value; or

(2) to buy, receive, possess, or obtain control of property with intent to do any of the acts set forth in paragraph (1).

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

(c) It shall not be a defense to a prosecution under this section that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(d) Any person convicted of trafficking in stolen property shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

Sec. 132. Receiving Stolen Property.

New D.C.Code, sec. 22-3832 (1981 ed.)

(a) A person commits the offense of receiving

stolen property if that person buys, receives, possesses, or obtains control of stolen property, knowing or having reason to believe that the property was stolen, with intent to deprive another of the right to the property or a benefit of the property.

(b) It shall not be a defense to a prosecution for an attempt to commit the offense described in this section that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(c) Penalties.

(1) Any person convicted of receiving stolen property shall be fined not more than $5,000 or imprisoned not more than 7 years, or both, if the value of the stolen property is $250 or more.

(2) Any person convicted of receiving stolen property shall be fined not more than $1,000 or imprisoned not more than 1 year, or both, if the value of the stolen property is less than $250.

Subtitle 5. Forgery

D.C.Code, title 22 new chapt subchapte

Sec. 141. Forgery.

New D.C.Code, sec. 22-1 (1981 ed.

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

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

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

(B) contains a false addition or insertion; or

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

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

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

(A) security, bill of lading, document of title, draft, check, certificate of deposit, and letter of credit, as defined in title 28, D C. Code;

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

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

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

(E) other instrument commonly known as a

security or so defined by an Act of Congress or a provision of the District of Columbia Code.

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

Sec. 142. Penalties for Forgery.

New
D.C.Code,
sec. 22-3842
(1981 ed.)

(a) Any person convicted of forgery shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both, if the written instrument purports to be:

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

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

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

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

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

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

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

(b) Any person convicted of forgery shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both, if the written instrument is or purports to be:

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

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

(3) a written instrument having a value of $250 or more.

(c) Any person convicted of forgery shall be fined not more than $2,500 or imprisoned for not more than 3 years, or both, in any other case.

Subtitle 6. Extortion.

D.C.Code, title 22, new chapter subchapter

Sec. 151. Extortion.

New D.C.Code, sec. 22-385 (1981 ed.)

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

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

injury; or

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

(b) Any person convicted of extortion shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

Sec. 152. Blackmail.

New
D.C.Code,
sec. 22-3
(1981 ed.

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

(1) to accuse any person of a crime;

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

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

(b) Any person convicted of blackmail shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

Title II. Enhanced Penalty.

Sec. 201. Enhanced Penalty for Crimes Committed Against Senior Citizen Victims.

D.C.Code,
title 22,
new chapt

(a) Any person who commits any offense listed in subsection (b) against an individual who is 60 years of age or older, at the time of the offense, may be punished by a fine of up to 1 1/2 times the maximum

New
D.C.Code,
sec. 22-3
(1981 ed.

fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) The provisions of subsection (a) shall apply to the following offenses: robbery, attempted robbery, theft, attempted theft, extortion, fraud in the 1st degree, and fraud in the 2nd degree.

(c) It is an affirmative defense that the accused knew or reasonably believed that the victim was not 60 years of age or older at the time of the offense.

Title III. Bribery Offenses.

D.C.Code, title 22, chapter 7, new subchapte (1981 ed.)

Sec. 301. Definitions for Bribery Offenses

New D.C.Code, sec. 22-711 (1981 ed.)

For the purposes of this title, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Juror" means any grand, petit, or other juror, or any person selected or summoned as a prospective juror of the District of Columbia.

(3) "Official action" means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of the public servant.

(4) "Official duty" means any required conduct that does not involve an exercise of discretion on the part of the public servant.

(5) "Official proceeding" means any trial,

hearing, or other proceeding in any court of the District of Columbia, or in any agency or department of the District of Columbia government.

(6) "Public servant" means any officer, employee, or other person authorized to act for or on behalf of the District of Columbia government. The term "public servant" includes any person who has been elected, nominated, or appointed to be a public servant or a juror. The term "public servant" does not include an independent contractor.

Sec. 302. Bribery.

(a) A person commits the offense of bribery if that person:

New
D.C.Code,
sec. 22-712
(1981 ed.)

(1) corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(2) corruptly solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant;

in return for an agreement or understanding that an official act of the public servant will be influenced thereby or that the public servant will violate an official duty, or that the public servant will commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.

(b) Nothing in this section shall be construed as prohibiting concurrence in official action in the course of legitimate compromise between public

servants.

(c) Any person convicted of bribery shall be fined not more than $25,000 or 3 times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than 10 years, or both.

Sec. 303. Bribery of a Witness.

New
D.C.Code,
sec. 22-713
(1981 ed.)

(a) A person commits the offense of bribery of a witness if that person.

(1) corruptly offers, gives, or agrees to give to another person; or

(2) corruptly solicits, demands, accepts, or agrees to accept from another person;

anything of value in return for an agreement or understanding that the testimony of the recipient will be influenced in an official proceeding before any court of the District of Columbia or any agency or department of the District of Columbia government, or that the recipient will absent himself or herself from such proceedings.

(b) Nothing in subsection (a) shall be construed to prohibit the payment or receipt of witness fees provided by law, or the payment by the party upon whose behalf a witness is called and receipt by a witness of a reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such proceeding, or, in the case of expert witnesses, a reasonable fee for time spent in the preparation of a technical or professional opinion and

appearing and testifying.

(c) Any person convicted of bribery of a witness shall be fined not more than $2,500 or imprisoned for not more than 5 years, or both.

Title IV. Perjury and Related Offenses.

D.C.Code, title 22, new chapter 2 (1981 ed.)

Sec. 401. Perjury.

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

New D.C.Code, sec. 22-2511 (1981 ed.)

(1) having taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered, that he or she will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by that person subscribed is true, wilfully and contrary to an oath or affirmation states or subscribes any material matter which he or she does not believe to be true and which in fact is not true; or

(2) as a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully certifies falsely as to another material matter in an acknowledgement.

(b) Any person convicted of perjury shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both.

Sec. 402. Subornation of Perjury.

New D.C.Code, sec. 22-2512 (1981 ed.)

A person commits the offense of subornation of perjury if that person wilfully procures another to

commit perjury. Any person convicted of subornation of perjury shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both

Sec. 403. False Swearing.

(a) A person commits the offense of false swearing if under oath or affirmation he or she wilfully makes a false statement, in writing, that is in fact material and the statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

New D.C.Code, sec. 22-2 (1981 ed.

(b) Any person convicted of false swearing shall be fined not more than $2,500 or imprisoned for not more than 3 years, or both.

Sec. 404. False Statements.

(a) A person commits the offense of making false statements if that person wilfully makes a false statement that is in fact material, in writing, directly or indirectly, to any instrumentality of the District of Columbia government, under circumstances in which the statement could reasonably be expected to be relied upon as true: PROVIDED, That the writing indicates that the making of a false statement is punishable by criminal penalties

New D.C.Code, sec. 22-2 (1981 ed.)

(b) Any person convicted of making false statements shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both.

Title V. Obstruction of Justice.

D.C.Code, title 22, chapter 7, new subcha III (1981 ed.)

Sec. 501. Definitions for Obstruction of Justice.

For the purpose of this title, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

New D.C.Code, sec. 22-72 (1981 ed.)

(2) "Criminal investigator" means an individual authorized by the Mayor or the Mayor's designated agent to conduct or engage in a criminal investigation, or a prosecuting attorney conducting or engaged in a criminal investigation.

(3) "Criminal investigation" means an investigation of a violation of any criminal statute in effect in the District of Columbia.

(4) "Official proceeding" means any trial, hearing, or other proceeding in any court of the District of Columbia or any agency or department of the District of Columbia government.

Sec. 502. Obstruction of Justice.

(a) A person commits the offense of obstruction of justice if that person:

New D.C.Code, sec. 22-72 (1981 ed.)

(1) corruptly, or by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court of the District of Columbia in the discharge of his or her duties;

(2) corruptly, by threats or force, in any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any court of the District of Columbia;

(3) wilfully endeavors by means of bribery,

misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia by any person of information relating to a violation of any criminal statute in effect in the District of Columbia;

(4) injures any person or his or her property on account of the person or any other person giving to a criminal investigator in the course of any criminal investigation information related to a violation of any criminal statute in effect in the District of Columbia; or

(5) injures any person or his or her property on account of the person or any other person performing his official duty as a juror, witness, or officer in any court in the District of Columbia.

(b) Any person convicted of obstruction of justice shall be fined not more than $1,000 or imprisoned for not more than 3 years, or both.

Sec. 503. Tampering with Physical Evidence.

New
D.C.Code,
sec. 22-723
(1981 ed.)

(a) A person commits the offense of tampering with physical evidence if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.

(b) Any person convicted of tampering with

physical evidence shall be fined not more than $1,000 or imprisoned for not more than 3 years, or both.

Title VI. Amendments and Repealers.

Sec. 601. Amendments.

(a) D.C Code, sec. 16-708 is amended by striking the phrase "embezzlement, shall be fined not more than $5000 or imprisoned not more than 5 years, or both." and inserting the phrase "theft, and shall be punished in the manner prescribed by law for such offense." in lieu thereof. D.C.Code, sec. 16-708

(b) Section 904 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1336; D.C. Code, sec. 22-101) is amended by inserting following the word "Except" the phrase where otherwise provided for". D.C.Code, sec. 22-101 (1981 ed.)

(c) Section 905 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1336; D.,C. Code, sec. 22-102) is amended immediately following the word "Act" by inserting the phrase "and the District of Columbia Theft and White Collar Crimes Act of 1982". D.C.Code, sec. 22-103 (1981 ed.)

(d) Section 849 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Code, sec. 22-3106) is amended by striking the word "steal," wherever it appears. D.C.Code, sec. 22-3106 (1981 ed.)

(e) Section 1 of An Act to control the possession, sale, transfer, and use of pistols and other dangerous

weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Code, sec. 22-3201) is amended by striking the word "larceny".

D.C.Code, sec. 22-3201 (1981 ed.)

(f) D.C. Code, sec. 23-546 is amended as follows:

(1) subsection (c)(1) is amended by striking the following phrases:

D.C.Code, sec. 23-546

(A) "Blackmail...section 819 (D.C Code, sec. 22-2305).";

(B) "Bribery ..section 861 (D.C Code, sec. 22-701).";

(C) "Grand Larceny.. section 826 (D.C Code, sec. 22-2201).";

(D) "Obstruction of justice...section 862 (D.C. Code, sec. 22-703).": and

(E) "Receiving stolen property of value in excess of $100...section 829 (D.C. Code, sec 22-2205).";

(2) subsection (c)(2) is amended by striking the following phrase, "(A) in the second paragraph under the center heading 'General Expenses' in the first section of the Act of July 1, 1902 (D.C. Code, sec. 22-702), and (B)";

(3) subsection (c)(3) is amended by:

(A) striking the phrase "Extortion and threats" and inserting the word "Threats" in lieu thereof; and

(B) striking the phrase "sections 1501 and 1502" and inserting the phrase "section 1501" in lieu thereof;

(4) subsection (c)(4) is amended to read as follows:

"(4) Offenses involving the manufacture, distribution, or possession with intent to manufacture or distribute controlled substances as specified in sections 401 through 403 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Code, secs. 33-441 through -443).";

and

(5) by adding a new paragraph (5) at the end thereof to read as follows:

"(5) Any of the offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table

"Offense	Specified in -
"Extortion	section 151.
"Blackmail	section 152.
"Bribery	section 302.
"Obstruction of Justice	section 502.
"Receiving stolen property of value in excess of $250	section 132.
"Theft of property of value in excess of $250	section 111.
"Trafficking in stolen property	section 131.".

(g) D.C. Code, sec. 23-581 is amended as follows:

D.C.Code, sec. 23-581

"Unauthorized use of vehicles.....section 115.".

(h) Section 732 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1307; D.C. Code, sec. 26-420) is amended by striking the word "larceny" and inserting the word "theft" in lieu thereof.

D.C.Code, sec. 26-420 (1981 ed.)

(i) Section 691 of An Act To establish a code of law for the District of Columbia, approved March 4, 1909 (35 Stat. 1058; D.C Code, sec. 26-504(c)) is amended by striking the word "larceny" and inserting the word "theft" in lieu thereof.

D.C.Code, sec. 26-504 (1981 ed.)

Sec. 602. Repealers.

(a) D.C. Code, sec. 23-314 is repealed.

D.C.Code, sec. 23-314 repealed

(b) Section 861 of An Act To establish a code of aw for the District of Columbia, approved March 3, 1901 (31 Stat. 1330; D.C. Code, sec. 22-701) is repealed.

D.C.Code, sec. 22-701 (1981 ed.) repealed

(c) The following paragraph of section 1 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes, approved July 1, 1902 (32 Stat. 591; D.C. Code, sec. 22-702) is repealed:

D.C.Code, sec. 22-702 (1981 ed.) repealed

"That hereafter every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or .iding to give or procure any office, place, or

promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court.".

(d) Section 862 of An Act To establish a code of law for the District of Columbia, approved December 27, 1967 (81 Stat. 736; D.C. Code, sec. 22-703) is repealed.

D.C.Code, sec. 22-703 (1981 ed.) repealed

(e) Section 833 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1201) is repealed.

D.C.Code, sec. 22-1201 (1981 ed.) repealed

(f) Section 834 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C Code, sec. 22-1202) is repealed.

D.C.Code, sec. 22-1202 (1981 ed.) repealed

(g) Section 835 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1203) is repealed.

D.C.Code, sec. 22-1203 (1981 ed.) repealed

(h) Section 836 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1204) is repealed.

D.C.Code, sec. 22-1204 (1981 ed.) repealed

(i) Section 837 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1205) is repealed.

D.C.Code, sec. 22-1205 (1981 ed.) repealed

(j) Section 838 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-1206) is repealed.

D.C.Code, sec. 22-1206 (1981 ed.) repealed

(k) Section 851a of An Act To establish a code of law for the District of Columbia, approved August 12, 1937 (50 Stat. 629; D.C Code, sec. 22-1207) is repealed.

D.C.Code, sec. 22-1207 (1981 ed.) repealed

(l) Section 1 of An act to prevent fraudulent transactions on the part of commission merchants and other consignees of goods and other property in the District of Columbia, approved March 21, 1892 (27 Stat. 10; D C. Code, sec. 22-1208) is repealed.

D.C.Code, sec. 22-1208 (1981 ed.) repealed

(m) Section 839 of An Act To establish a code of law for the District of Columbia, approved December 30, 1967 (77 Stat. 769; D.C. Code, sec. 22-1209) is repealed.

D.C.Code, sec. 22-1209 (1981 ed.) repealed

(n) Section 841 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1210) is

D.C.Code, sec. 22-1210 (1981 ed.) repealed

repealed.

(o) The last sentence of An Act To amend "An Act for the preservation of the public peace and protection of property in the District of Columbia," approved July twenty-ninth, eighteen hundred and ninety-two, approved April 21, 1906 (34 Stat. 127; D.C. Code, sec. 22-1211) is repealed. D.C.Code, sec. 22-1211 (1981 ed.) repealed

(p) Section 842 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1301) is repealed. D.C.Code, sec. 22-1301 (1981 ed.) repealed

(q) Chapter 949 of An Act To prevent the unlawful wearing of the badge or insignia of the Grand Army of the Republic or other soldier organizations, approved March 15, 1906 (34 Stat. 62; D.C. Code, sec. 22-1307) is repealed D.C.Code, sec. 22-1307 (1981 ed.) repealed

(r) Section 845 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Code, sec. 22-1308) is repealed. D.C.Code, sec. 22-1308 (1981 ed.) repealed

(s) Section 843 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C. Code, sec. 22-1401) is repealed. D.C.Code, sec. 22-1401 (1981 ed.) repealed

(t) Section 830a of An Act To amend the Act entitled "An Act To establish a code of law for the District of Columbia, approved March 3, 1901," and the Acts amendatory thereto and supplementary thereto, D.C.Code, sec. 22-1404 (1981 ed.) repealed

approved April 19, 1920 (41 Stat. 567; D.C. Code, sec. 22-1404) is repealed.

(u) Section 840 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1326; D.C Code, sec. 22-1405) is repealed.

D.C.Code, sec. 22-140 (1981 ed.) repealed

(v) Section 1 of An Act To prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 662; D.C Code, sec. 22-1407) is repealed.

D.C.Code, sec. 22-140 (1981 ed.) repealed

(w) Section 2 of An Act To prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box

D.C.Code, sec. 22-140 (1981 ed.) repealed

telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale, advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 663; D C. Code, sec. 22-1408) is repealed.

(x) Section 3 of An Act to prohibit in the District of Columbia the operation of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle designed to receive or be operated by lawful coin of the United States of America, or a token provided by the person entitled to the coin contents of such receptacle in connection with the sale, use, or enjoyment of property or service by means of slugs, spurious coins, tricks, or devices not authorized by the person entitled to the coin contents thereof; and to prohibit in the District of Columbia the manufacture, sale, offering for sale,

D.C.Code, sec. 22-1409 (1981 ed.) repealed

advertising for sale, distribution, or possession for such use of any token, slug, false or counterfeited coin, or any device or substance whatsoever except tokens authorized by the person entitled to the coin contents of such receptacle; and providing a penalty for violation thereof, approved August 16, 1937 (50 Stat. 663; D.C. Code, sec. 22-1409) is repealed.

(y) Section 826 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2201) is repealed.

D.C.Code, sec. 22-2201 (1981 ed.) repealed

(z) Section 827 of An Act To establish a code of law for the District of Columbia, approved August 12, 1937 (50 Stat. 628; D.C. Code, sec. 22-2202) is repealed.

D.C.Code, sec. 22-2202 (1981 ed.) repealed

(aa) Section 851b of An Act To establish a code of law for the District of Columbia, approved March 3, 1913 (37 Stat. 727; D.C Code, sec. 22-2203) is repealed.

D.C.Code, sec. 22-2203 (1981 ed.) repealed

(bb) Section 826b of An Act To establish a code of law for the District of Columbia, approved October 17, 1976 (90 Stat. 2479; D.C. Code, sec. 22-2204) is repealed.

D.C.Code, sec. 22-2204 (1981 ed.) repealed

(cc) Section 826c of An Act To establish a code of law for the District of Columbia, approved March 7, 1942 (56 Stat. 143; D.C. Code, sec. 22-2204a) is repealed.

D.C.Code, sec. 22-2204a (1981 ed.) repealed

(dd) Section 829 of An Act To establish a code of

law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C Code, sec. 22-2205) is repealed.

D.C.Code, sec. 22-2205 (1981 ed.) repealed

(ee) Section 831 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C. Code, sec. 22-2206) is repealed.

D.C.Code, sec. 22-2206 (1981 ed.) repealed

(ff) Section 832 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1325; D.C. Code, sec. 22-2207) is repealed.

D.C.Code, sec. 22-2207 (1981 ed.) repealed

(gg) Section 828 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1324; D.C Code, sec. 22-2208) is repealed.

D.C.Code, sec. 22-2208 (1981 ed.) repealed

(hh) Section 815 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C Code, sec. 22-2301) is repealed.

D.C.Code, sec. 22-2301 (1981 ed.) repealed

(ii) Section 816 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2302) is repealed.

D.C.Code, sec. 22-2302 (1981 ed.) repealed

(jj) Section 817 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-2303) is repealed.

D.C.Code, sec. 22-2303 (1981 ed.) repealed

(kk) Section 818 of An Act To establish a code of

law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C Code, sec. 22-2304) is repealed.

D.C.Code, sec. [redacted] (1981 ed. repealed

(11) Section 819 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat 1323, D.C Code, sec. 22-2305) is repealed.

D.C.Code, sec. 22-2 (1981 ed., repealed

(mm) Section 1501 of the Omnibus Crime Control and Safe Streets Act of 1968 approved June 19, 1968 (82 Stat. 238; D.C Code, sec. 22-2306) is repealed.

D.C.Code, sec. 22-23 (1981 ed.) repealed

(nn) Section 858 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1329; D.C. Code, sec. 22-2501) is repealed.

D.C.Code, sec. 22-25((1981 ed.) repealed

(oo) R.S.D.C sec. 1180 (D.C Code, sec. 22-2602) is repealed.

D.C.Code, sec. 22-26((1981 ed.) repealed

(pp) Section 826a of An Act To amend an Act entitled "An Act to establish a code of law for the District of Columbia", approved June 30, 1902 (32 Stat. 534; D.C. Code, sec. 22-3115) is repealed.

D.C.Code, sec. 22-311 (1981 ed.) repealed

(qq) Section 15 of An act regulating gas-works, approved June 23, 1874 (18 Stat. 280; D.C. Code, sec. 22-3116) is repealed.

D.C.Code, sec. 22-311((1981 ed.) repealed

(rr) Section 1 of An act to prevent fraud upon the water revenues of the District of Columbia, approved April 5, 1892 (27 Stat. 14; D.C. Code, sec. 22-3117) is repealed.

D.C.Code, sec. 22-3117 (1981 ed.) repealed

(ss) Section 1 of An Act To regulate the sale of

kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3404) is repealed.

D.C.Code, sec. 22-3404 (1981 ed.) repealed

(tt) Section 2 of An Act To regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C Code, sec. 22-3405) is repealed.

D.C.Code, sec. 22-3405 (1981 ed.) repealed

(uu) Section 3 of An Act To regulate the sale of kosher meat in the District of Columbia, approved April 15, 1926 (44 Stat. 253; D.C. Code, sec. 22-3406) is repealed.

D.C.Code, sec. 22-3406 (1981 ed.) repealed

(vv) Section 1 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C Code, sec. 22-3409) is repealed.

D.C.Code, sec. 22-3409 (1981 ed.) repealed

(ww) Section 2 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C Code, sec. 22-3410) is repealed.

D.C.Code, sec. 22-3410 (1981 ed.) repealed

(xx) Section 3 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3411) is repealed.

D.C.Code, sec. 22-3411 (1981 ed.) repealed

(yy) Section 4 of An Act To protect the buyers of potatoes in the District of Columbia, approved August 12, 1937 (50 Stat. 626; D.C. Code, sec. 22-3412) is repealed.

D.C.Code, sec. 22-3412 (1981 ed.)

(zz) R.S.D.C. sec. 1179 (D.C. Code, sec. 22-3413)

is repealed.

D.C.Code, sec. 22-3413 (1981 ed.) repealed

(aaa) Section 50 of An Act To make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 309; D.C. Code, sec. 22-3701) is repealed.

D.C.Code, sec. 22-3701 (1981 ed.) repealed

(bbb) Section 51 of An Act To make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 309; D.C Code, sec. 22-3702) is repealed.

D.C.Code, sec. 22-3702 (1981 ed.) repealed

(ccc) Section 52 of An Act To make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 309; D.C Code, sec. 22-3703) is repealed.

D.C.Code, sec. 22-3703 (1981 ed.) repealed

(ddd) Section 53 of An Act To make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 310; D.C Code, sec. 22-3704) is repealed.

D.C.Code, sec. 22-3704 (1981 ed.) repealed

(eee) Section 54 of An Act To make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 310; D.C. Code, sec. 22-3705) is repealed.

D.C.Code, sec. 22-3705 (1981 ed.) repealed

(fff) Section 55 of An Act To make uniform the law of warehouse receipts in the District of Columbia, approved April 15, 1910 (36 Stat. 310; D.C. Code, sec. 22-3706) is repealed.

D.C.Code, sec. 22-3706 (1981 ed.) repealed

Title VII. Applicability and Effective Date.

Sec. 701. Applicability and Effective Date.

(a) The provisions of this act shall apply only to

Note, D.C.Code, secs. 22-711 et -2511 et seq., - et seq., & -3901 seq. (1981 ed.)

COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Four
Second Session

DOCKET NO: B 4-133

[X] Item on Consent Calendar

ACTION: Adopted First Reading, 6-22-82

[ ] VOICE VOTE: Unanimous

Absent: all present

[ ] ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE, JR.					WILSON				
CRAWFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

Vivian R. Cunningham — Secretary to the Council — July 20, 1982 — Date

[ ] Item on Consent Calendar

ACTION: Adopted Amended First Reading, 7-6-82

[X] VOICE VOTE: Unanimous

Absent: all present

[ ] ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE, JR.					WILSON				
CRAWFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

Vivian R. Cunningham — Secretary to the Council — July 20, 1982 — Date

[X] Item on Consent Calendar

ACTION: Adopted Final Reading, 7-20-82

[X] VOICE VOTE: Unanimous

Absent: all present

[ ] ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE, JR.					WILSON				
CRAWFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

Secretary to the Council — Date

81—P0374

offenses committed on or after the effective date of this act. An offense is committed after the effective ate of this act only if all elements of the offense occurred after the effective date. Prosecutions for offenses committed prior to the effective date of this act shall be governed by the prior law, which is continued in effect for that purpose as if this act was not in force.

(b) This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental eorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(2)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED: August 4, 1982

Memorandum

Leifried
732 F. 2d 388, 390

Subject	Date
Theft and White Collar Crimes Act	April 29, 1983

To All Misdemeanor Assistants From Special Litigation

Attached is a copy of the Theft and White Collar Crimes Act which went into effect on December 1, 1982. As you are aware, the act substantially alters the law involving larceny, embezzlement and false pretenses and recodifies them under the single offense of theft.

Attachment:

District of Columbia Theft and White Collar Crimes Act of 1982

GENERAL DEFINITIONS

22 D.C. Code §3801 contains definitions of various terms used in the subsequent sections. Essentially, such terms as "appropriate", "deprive", "property", "property of another", "services", and "stolen property" are defined in such a manner as to be reasonably all inclusive so that the new theft and fraud provisions include virtually all of the offenses encompassed under the now repealed larceny, embezzlement, larceny after trust, and false pretenses provisions and cover both tangible and intangible property and services.

AGGREGATION OF OFFENSES

22 D.C. Code §3802 provides that amounts received in a single scheme or course of conduct may be aggregated to determine the grade of the offense and sentence in theft, fraud and credit card fraud cases. Therefore, what previously would have been numerous petit larcenies, for example, can now be aggregated to make one felony theft if it can be shown that the various offenses were part of a single scheme. There are no specific guidelines in the statute or the legislative history to determine the allowable parameters of what will be consisdered a "single scheme" or "systematic course of conduct." However, offenses of a similar nature against similar victims within a reasonable period of time such as a series of thefts from retail stores or a series of street cons over a period of a month would qualify. (Aggregation of offenses in credit card fraud only is limited to seven consecutive days). However, we should not attempt to aggregate disparate types of offenses such as a traditional petty larcenies and false pretenses even though both are now classified simply as theft.

DUPLICATIVE OFFENSES

22 D.C. Code §3803 provides that defendants cannot be sentenced consecutively for the theft and fraud, theft and unauthorized use of a vehicle, or theft and commercial piracy.

ENHANCED PENALTY FOR CERTAIN CRIMES AGAINST SENIOR CITIZENS

22 D.C. Code §3901(a) provides that persons committing certain crimes against victims 60 years of age or older at the time of the offense may be punished by a fine up to 1 1/2 times the maximum fine or imprisoned for a term up to 1 1/2 times the maximum term authorized for the offense, or both. Under §3901(b), such enhancement applies to the offenses of robbery, attempted robbery, theft, attempted theft, extortion, fraud in the first degree and fraud in the second degree. The new provision should be treated as an additional element to these offenses, much like the "while armed" provision of D.C. Code §22-3202 is treated to obtain sentence enhancement. Thus, the element of the victim's age must be plead in the indictment and proven at trial in order to get the enhanced penalty. However, unless approved by a supervisor, the enhanced penalty provisions should not be used in cases which would otherwise be misdemeanors where to so plead would raise the misdemeanor to a felony requiring indictment by a grand jury.

THEFT

A. The Statute - 22 D.C. Code §§3811-3812

Section 3811

(a) For the purpose of this section, the term "wrongfully obtains or uses" means:

(1) taking or exercising control over property;

(2) making an unauthorized use, disposition, or transfer or an interest in or possession of property; or

(3) obtaining property by trick, false pretense, false token, tampering, or deception. The term "wrongfully obtains or uses" includes conduct previously known as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.

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

(1) to deprive the other of a right to the property or a benefit of the property; or

(2) to appropriate the property to his or her own use or to the use of a third person.

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

Section 22-3812 -- Penalties for theft

(a) Theft in the first degree. Any person convicted of theft shall be fined not more than $5,000 or imprisoned for not more than ten years, or both, if the value of the property obtained or used is $250 or more.

(b) Theft in the second degree. Any person convicted of theft shall be fined not more than $1,000 or imprisoned for not more than one year or both, if the value of the property obtained or used is less than $250.00.

Note of Caution:

The legislative history accompanying the enactment of this Act states:

> "This section [theft] consolidates the numerous theft offenses currently contained in the criminal code. There are currently more than thirty statutes in Title 22 of the District of Columbia criminal Code which prohibit various forms of theft and fraud. The distinctions between the offenses are highly technical and have served only to confuse the charging process. [Section 3811] eliminates these distinctions from the law." (Emphasis added)

Among the significant statutes repealed and consolidated are grand and petit larceny (22 D.C. Code §§2201, 2202), larceny after trust (22 D.C. Code § 2203), embezzlement (22 D.C. Code §1202) and false pretenses (22 D.C. §1301). As a result of some preliminary discussions with the Public Defender Service, it is clear that they and the defense bar in general will be filing motions for bills of particulars to try to force us to elect which theory of theft we are proceeding under, i.e., larceny, embezzlement, larceny after trust, false pretenses, etc., etc. Our position must be that those distinctions between the now repealed offenses no longer exist and that we neither have to elect a particular theory nor file a bill of particulars stating either the theory or factual basis of the charge. In this context, you should be aware of the clear distinction between giving appropriate discovery and filing a bill of particulars. In every theft case in which the defense seeks to force an election of theories or the filing of a bill of particulars, our response should be that the normal discovery under Rule 16 is sufficient to alert the defense to the factual circumstances of the offense. However, we must resist the filing of any bills of particulars or giving discovery in any form which can be interpreted as a bill of particulars which locks us into a theory of prosecution based on the old statutes because by so doing we not only would negate the entire purpose of the new Act but open ourselves up to potential judgements of acquittal based on a variance of proof relating to finite variances in the elements. For example, the distinctions between embezzlement and larceny after trust are nonexistant under the new statute. However, if we were to file a bill of particulars stating that our theory of prosecution was embezzlement and at trial we failed to prove that the converted property came into the defendant's possession by virture of his employment or office, a legitimate argument could be made for a MJOA, even though the theft statute itself does not require that particular element. In short, pay close attention to the elements of the new statute and do not get caught in a trap of electing a theory based on the old distinctions between offenses.

B. ELEMENTS and DISCUSSION

1. The defendant wrongfully obtained or used the property of another.

(a) A person wrongfully obtains or uses property when he or she takes or exercises control over the property or makes an unauthorized use, disposition or transfer of an interest in or possession of the property or obtains property by trick, false pretenses, false token, tampering or deception.

(b) The property must be that of another. "Property" means anything of value. The term "property" includes, but is not limited to: (A) real property, including things growing on, or affixed to, or found on land; (B) tangible or intangible personal property; and (C) services (D.C. Code Section 22-3801)). "Property of another" means any property in which a government or a person other than the accused has an interest in which the accused is not privileged to interfere with or infringe without consent, regardless of whether the accused also has an interest in that property. The term property of another includes the property of a corporation or other legal entity established pursuant to an interstate compact. The term "property of another" does not include any property in the possession of the accused as to which any other person has only a security interest (D.C. Code, Section 22-3801(4)). The property which is the object of the theft may be in the form of services. (D.C. Code Section 22-3811(c)). "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. (D.C. Code Section 22-3801(5)). "Stolen property includes any property that has been obtained by conduct previously known as embezzlement (D.C. Code Section 22-3801(6).

2. <u>The obtaining or use of the property must be against the will of the complainant</u>.

The offense is not committed if the property is obtained or used with the knowledge and consent of the owner, or of one authorized to consent on his behalf.

3. <u>The defendant must have obtained or used the property with the specific intent to deprive the complainant of a right or benefit to the property or to appropriate the property to his or her own use</u>.

The term 'appropriate' means to take or make use of without authority or right. (D.C. Code Section 22-3801 (1)). "Deprive" means: (A) to withold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value; or (B) to dispose of the property so as to make it unlikely that the owner will recover it. D.C. Code Section 22-3801 (2).

4. The property wrongfully obtained or used was of the value of (~~$250.00 or more~~) (some value).

Amounts received pursuant to a single scheme or systematic course of conduct in violation of Section 3811 may be aggregated in determining the grade of the offense and the sentence for the offense. (See Section 22-3802). The distinction between first and second-degree theft, like the old grand and petit larceny, depends upon the value of the property taken. The misdemeanor cut-off has been raised from $100 to $250.

C. PENALTIES

A. First-degree theft; ten years, $5,000 or both. Second-degree theft; one year, $1,000 or both.

B. Theft is one of the offenses to which the enhanced penalty for crimes against senior citizens applies.

SHOPLIFTING

A. The STATUTE 22 D.C. Code §3813

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

(1) knowingly conceals or takes possession of any such property;

(2) knowingly removes or alters the price tag, serial number, or other identification mark that is imprinted on or attached to such property; or

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

(b) Any person convicted of shoplifting shall be fined not more than $300 or imprisoned for not more than 90 days or both.

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

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

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

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

(3) the 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.

B. ELEMENTS and DISCUSSION

Section 3813 creates a separate offense for the theft of tangible personal property offered for sale to the public at retail stores. This offense was formerly prosecuted as larceny and attempt larceny. Since the offense, as defined, is an attempt to commit theft, there can be no offense of attempt shoplifting. (Subsection 3813(c)). Subsection 3813 (d) also clarifies the civil liabilities of shopkeepers who detain suspected offenders. However, this provision in no way affects the criminal liability of the person detained. The elements are:

(1) The defendant appropriated tangible personal property. The term 'appropriate' means to take or make use of without authority or right (D.C. Code Section 22-3801 (7). The term property is limited to tangible personal property (Section 3813 (d)).

(2) Tangible personal property must be that of another. "Property of another" means any property in which a government or a person other than the accused is not priviledged to interfere with or infringe without consent. The term property of another includes the property of a corporation or other legal entity established pursuant to an interstate compact (D.C. Code Section 22-3811 (c)).

(3) The property must be offered for sale to the public.

Prosecution under Section 3813 will normally be instituted when merchandise is "shoplifted" from retail stores regularly offering tangible personal property for sale to the public. Absent unusual circumstances, persons who "appropriate" merchandise during other sales endeavors such as private yard sales will not be prosecuted under Section 3813.

(4) The property was appropriated without the consent of the owner.

Shoplifting is an offense against possession rather than against ownership. It is only necessary to prove that the property taken did not belong to the defendant and that he was not given permission to possess it. Levin v. United States, 119 U.S. App. D.C. 156, 338 F.2d 265 (1964). This proof may be established through the testimony of the owner: however, it is not necessary that the owner be called to testify when it can be established from other sources. Riley v. United States, 291 A.2d 190 (D.C. App. 1972). When ownership is claimed to be a corporation, specific proof is required. Atkinson v. United States, 322 A.2d 587 (D.C. App.(1974). The existence of a corporation as a victim of theft may be proved by (1) production of a charter or certificate of incorporation; (2) a license to do business as such; (3) parole evidence of incorporation. Bimbo v. United States, 65 App. D.C. 246, 82 F.2d 852, cert. denied, 297 U.S. 721 (1936); Atkinson v. United States, 322 A.2d 587 (D.C. App. 1974).

(5) The defendant failed to make full payment for the property.

A person who knowingly alters the price tag of merchandise to reflect a lower sale value than that intended by the seller, is guilty of shoplifting, even though the offender pays the lower price in full. Section 3813 (a) (2).

Retail store cashiers who conspire with shoppers to undercharge for purchased merchandise, may be prosecuted as aiders and abettors (and henceforth principals) under the shoplifting statute.

(6) The defendant appropriated the property with the specific intent to deprive the owner of the value of the property.

Specific intent can be proved by circumstantial evidence. Fogel v. United States, 336 A.2d 833 (D.C. App. 1975). Where the defendant is apprehended outside a store for

shoplifting and has insufficient money to pay for the stolen items, there is enough evidence that he possesses the necessary intent. Cooper v. United States, 246 A.2d 641 (D.C. App. 1969). Defendant's return of the property to the store manager before leaving the store (after being observed shoplifting) does not vitiate the intent of the original taking. Groomes v. United States, 155 A.2d 73 (D.C. Mun. App. 1959). Defendant's concealment of the stolen property and his subsequent attempt to replace it are sufficient to show his criminal intent. McRae v. United States, 222 A.2d 848 (D.C. App. 1966). Placing items in a shoplifting bag in a self-service store is not sufficient evidence of criminal intent where there is no evidence of concealment. Dunphy v. United States, 235 A.2d 326 (D.C. App. 1967). May Department Stores v. Devercelli, 314 A.2d 833 (D.C. App. 1973). A defendant asserting the defense of intoxication must have been sufficiently drunk at the time of the offense to have been incapable of forming the requisite intent. Edwards v. United States, 84 U.S. App. D.C. 310, 172 F.2d 884 (1949).

(7) The property has some value.

The Government need only prove that the property taken was of some value. E.g. United States v. Thweatt, 140 U.S. App. D.C. 120, 443 F.2d 122 (1970); Terrell v. United States, 361 A.2d 207 (DC. App. 1976).

3. Penalties

$300 fine or 90 days' imprisonment or both. Thus shoplifting is not jury demandable.

COMMERCIAL PIRACY

1. The Statute - 22 D.C. Code §3814

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

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

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

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

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

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

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

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

(d) Any person convicted of commercial piracy shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

B. Elements and Discussion

The Judiciary Committee Comment accompanying this new statute states its purpose is not to subject a person to criminal liability if his or her intent in making the copy is not for commercial purposes but is strictly for his or her own personal use. A person who tapes a record merely intending to use the tape for personal enjoyment without any intent to sell the tape or use it for any commercial purpose would not have committed and offense under this section. It is not required that a person actually derive any profit from the recording or copy. A person who sells the copies at a loss would still be in violation of this section. The elements are:

1. The defendant reproduced, copied, possessed, bought or obtained copies of phonorecords of a sound recording, live performance or copies of proprietary information.

2. The defendant knew or had reason to believe that the copying was done without the consent of the owner.

3. The defendant copied, possessed, bought or obtained the phonorecords copies of proprietary information with the specific intent to sell, derive commercial gain or advantage allow another person to derive commercial gain or advantage.

A presumption of the requisite intent arises if the accused possesses 5 or more unauthorized phonorecords.

C. PENALTIES

$10,000 fine, one year imprisonment or both. (Misdemeanor)

UNAUTHORIZED USE OF MOTOR VEHICLES

A. The Statute - 22 D.C. Code §3815

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

(b) A person commits the offense of unathorized use of a motor vehicle under this subsection if, without the consent of the owner, that person takes, uses, operates, or removes or causes to be taken, used, operated, or removed, a motor vehicle from a garage, other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, enclosure, or space, and operates or drives or causes the motor vehicle to be operated or driven for his or her own profit, use, or purpose.

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

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

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

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

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

(3) This subsection shall not apply in the case of a motor vehicle obtained under a retail installation contract as defined in section 1(9) of An Act To provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes, approved April 22, 1960 (74 Stat. 69; D.C. Code, sec. 40-1101).

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

(d)(1) Any person convicted of unauthorized use of a motor vehicle under subsection (b) shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

(2) Any person convicted of unauthorized use of a motor vehicle under subsection (c) shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

B. Elements and Discussion

Although there are some minor language charges and reordering of paragraphs, the new statute paralles precisely the old statute, 22 D.C. Code §2204, and the elements remain the same. See U.S. Attorney's Office Criminal Trial Manual p. 521.

C. Penalties

Between the time the original bill was passed and the submission of the enrolled original to Congress, there was an apparent typing error in the penalty section with the following result. The original bill followed 22-2204 in providing for a 5 year, $1,000 penalty for UUV and a 3 year, $1,000 penalty for failure to return a rented vehicle. The enrolled original submitted to Congress provided for a 5 year, $1,000 penalty for both offenses but left intact that portion of the statute requiring that leasing companies warn lessees that "failure to return the motor vehicle may result in prosecution for violation of the criminal law. . . punishable by up to 3 years in jail." The error has been brought to the attention of the City Council and some remedial legislation will be submitted - when, we do not know. Nor do we know whether the Council will vote to return to the 3 year penalty or amend the warning language to 5 years. Until such time as the Council and Congress resolve the ambiguity, our position should be that defendants are subject only to a potential of 3 years for failure to return a rented vehicle.

TAKING PROPERTY WITHOUT RIGHT

A. The Statute - 22 D.C. Code §3816

> A person commits the offense of taking property without right if that person takes and carries away the property of another without right to do so. A person convicted of taking property without right shall be fined not more than $300 or imprisoned for not more than 90 days, or both.

B. Elements

The new statute makes no substantive changes from the old statute, 22 D.C. Code §1211 and the elements remain the same. See U.S. Attorney's Office Trial Manual, p. 512.

C. Penalties

The penalty has been changed from $100 or 6 months under the old statute to $300 or 90 days under the new provisions thus making this offense non jury demandable.

FRAUD

A. The Statute - 22 D.C. §§ 3821, 3822.

Sec. 3821, Fraud.

(a) Fraud in the 1st degree

A person commits the offense of fraud in the 1st degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtains property of another or causes another to lose property.

(b) Fraud in the 2nd degree.

A person commits the offense of fraud in the 2nd degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of false or fraudulent pretense, representation, or promise.

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

Sec. 3822. Penalties for Fraud.

(a) Fraud in the 1st degree.

(1) Any person convicted of fraud in the 1st degree shall be fined not more than $5,000 or three times the value of the property obtained or lost, whichever is greater, or imprisoned for not more than ten years, or both, if the value of the property obtained or lost is $250 or more; and

(2) Any person convicted of fraud in the 1st degree shall be fined not more than $1,000 or imprisoned for not more than one year, or both, if the value of the property obtained or lost was less than $250.

(b) Fraud in the 2nd degree.

(1) Any person convicted of fraud in the 2nd degree shall be fined not more than $3,000 or three times the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than three years, or both, if the value of the property which was the object of the scheme or systematic course of conduct was $250 or more; and

(2) Any person convicted of fraud in the 2nd degree shall be fined not more than $1,000 or imprisoned for not more than one year, or both, if the value of the property which was the object of the scheme or systematic course of conduct was less than $250.

2. Elements and Discussion

First-degree fraud (Sec. 3821(a))

(1) Engaging in a scheme or systematic course of conduct.

The new statute parallels in substantial part the federal mail and wire fraud provisions (18 U.S. Code

§§1341, 1343)*/ with the obvious difference that no mailing or interstate use of the wires need to be shown. Whereas the federal statute targets persons who "devise and intend to devise a scheme and artifice to defraud" with the mailing or use of wires being the substantive crime and required overt act, this statute's reference to engaging "in a scheme or systematic course of conduct" must be read to require specific overt acts in furtherance of the scheme. Similar to the federal analogue where there is no requirement that the mailing or wiring contain false representations or even that the scheme contemplated the use of the mails or wires, see Pereira v. United States, 347 U.S. 1 (1954); United States v. Maze, 414 U.S. 395 (1974), there should be no requirement here that the specific overt acts which make up the "scheme or systematic course of conduct" be criminal in and of themselves. Any acts which reasonably can be argued were committed to further the scheme, e.g., meetings with victims or among co-schemers, collecting or disbursing the money, opening a bank account to be used for the scheme, sending stall or lulling letters, etc., are sufficient. In addition, not all acts must be committed with the District of Columbia. We need only one in the District of Columbia to give us jurisdiction and we can plead acts outside the District of Columbia as part of the scheme and course of conduct.

In co-defendant cases, there is no requirement that one defendant actually commit or even know of specific overt acts charged as long as he can be shown to be part of the scheme (a co-conspirator). See United States v. Pollock, 175 U.S. App. D.C. 227, 534 F.2d 964 (1976) ("... once [co-defendant] was implicated

*/ Until the Court of Appeals rules otherwise, we should strenuously argue that the federal case law interpreting the fraud statutes, particularly as to the various evidentiary and procedural advantages attached to those statutes should apply equally here (conspiracy law applies equally to schemes to defraud including concepts of vicarious liability and the co-conspirator exception to hearsay rule, etc.,)

in the fraudulent scheme his participation in specific acts was irrelevant since the acts of other parties were attributable to him..."); United States v. Epstein, 154 F.2d 806 (2d Cir. 1945); Blue v. United States, 138 F.2d 351 (6th Cir. 1943); United States v. Amrep. Corp., 560 F.2d 539 (2d Cir. 1977); United States v. Grow, 394 F.2d 182 (4th Cir.), cert. denied, 393 U.S. 840 (1968).

Finally, while an individual case may arise which will require special consideration, the fraud provisions should be reserved exclusivley to cases wherein there are multiple overt acts committed in furtherance of major schemes (like pornography, it is impossible to define a major scheme, but hopefully you will know it when you see it). Because the new theft provisions (22-3811) and the aggregation of amounts taken or lost provision (22-3802) expand theft to cover virtually all traditonal false pretense, larceny by trick or larceny after trust type offenses and duplicate the fraud provisions in many aspects, all single event street cases such as Murphy or Badger games, pigeon drops, and one time consumer frauds should be charged as theft and not as fraud.

(2) With intent of defraud or to obtain property of another.

As in the federal statutes, the language "with intent to defraud or to obtain property of another" is significant in that it gives the prosecution wide latitude in the type of offenses covered by the term fraud. This statute is not limited to traditional money schemes and does not define "fraud." Neither statute nor cases fully define fraud; "it needs no definition, it is as old as falsehood and as a versable as humane ingenuity." Weiss v. United States, 122 F.2d 675, 681 (5th Cir. 1941). The standard Redbook instruction 3.04 defining "intent to defraud" is too restrictive to cover the range of activities which can be prosecuted under this statute.

The "intent to defraud" language covers a variety of sins from public corruption cases under the Kerner-Isaacs theory (where there is no discernable monetary loss by anyone and the defendants are convicted of "defrauding" the citizens of the honest and faithful services of their public officials, see United States v. Isaacs, 493 F.2d 1124 (7th Cir. 1974); United States v. Mandel, 591 F.2d 1347 (4th Cir. 1975), to schemes to deprive an employer of the honest and faithful services of an employee (e.g., commercial

bribery), United States v. Bryza, 522 F.2d 414 (7th cir. 1975), to the more typical money schemes (e.g., advance fee schemes, Ponzie schemes, home improvement frauds, check kiting etc). In short, our analysis of potential fraud cases should not be restricted to common-law definitions of false pretenses.

Note of Caution: As is discussed below, first-degree fraud requires the obtaining of property or causing another to lose property (property being defined under 22-3801(3), (4), (5) as including services). While we will assert in the appropriate case that "property" includes the honest and faithful services concept, any prosecution contemplated under a Kerner-Isaacs theory must be approved by the Director or Deputy Director, Superior Court Operations.

(3) By means of a false or fraudulent pretense, representation or promise.

The cases interpreting federal mail and wire fraud greatly expand the more restrictive false representations requirements under the old false pretenses statute. Unlike false pretenses in which representations as to future events were not covered, Chaplin v. United States, 81 U.S. App. D.C. 80, 157 F.2d 697 (1946), the new fraud provisions specifically include false representations as to future intentions (Section 3821 (c)). */ This conforms the statute to the case law interpreting the federal fraud statutes. Durland v. United States, 161 U.S. 306 (1896).

Unlike the requirements of false pretenses, the false representation need not be communicated directly to the victim by the defendant, Kreuter v. United States, 218 F.2d 532 (5th Cir. 1955); United States v. Sylvanus, 192 F.2d 96 (7th Cir. 1951), and fraud can be actionable even though no actual misrepresentations are made. Phillips v. United States, 356 F.2d 297 (9th Cir. 1965); Linden v. United States, 254 F.2d 560 (4th Cir. 1958). The way words are arranged or the circumstances in which they are used can be deceptive and thus fraudulent. United States v. Barton, 443 F.2d 912 (4th Cir. 1971); Lustiger v. United States, 386 F.2d 132 (9th Cir. 1967); Blachly v. United States, 380 F.2d 665 (5th Cir. 1967) and an honest belief that an enterprise would eventually succeed cannot excuse willful misrepresentations by which investor's funds are obtained. United States v. Painter, 314 F.2d 939 (4th Cir. 1963).

*/ However, under the statute proof that the defendant did not intend to perform the promised act or knew that it would not be performed requires more than the simple fact that one promise was not performed.

(4) Obtains property or causes another to lose property

Unlike the federal analogue which has no requirement that the scheme succeed on that anyone actually be defrauded first-degree fraud requires that the defendant actually obtain property or cause another to lose property. "Property" is defined in Section 3801(3) as "anything of value" including real property, tangible and intangible personal property (e.g., the goodwill of a business), and services which are further defined in Section 3801(5) as including professional or non-professional labor, use of vehicle or equipment, transportation or public utilities, supplying food or lodging, admission to public places or education or hospital services or accomodations.

The alternative provision of causing another to lose property covers those situations in which the defendant is caught mid-scheme and has not yet made his score, e.g., a Ponzi scheme where the ealier investors are paid off with later investor's money and the defendant has yet to collect from the new investors.

Second-degree fraud (Section 3821(b))

The elements of second-degree fraud are the same as first-degree except there is no requirement that the scheme succeed or that the defendant actually obtain property or cause anyone to lose property.*/ Second-degree fraud is essentially the same as the federal fraud statutes with the same requirements of establishing a scheme or course of conduct, the intent to defraud or obtain property, and false representations, pretenses or promises. The only difference is that the required substantive acts of mailing or use of the wires is supplanted here with engaging in a scheme or systematic course of conduct. However, before charging second-degree fraud in a scheme which did not succeed, we should be able to identify with some particularity the value of the property

*/ There is no reason to ever charge attempted first or second - degree fraud since second-degree is for all intents and purposes and attempted first-degree.

which was the object of the scheme as that value determines whether the charge is a felony or misdemeanor.

C. Penalties

Note Carefully: Unlike the theft provision, the felony - misdemeanor breakdown in the fraud statute is not related to the degree of the offense but to the age of the victim (See Section 3901), or the amount taken, lost or which was the object of the scheme. Both first and second degree can be either a felony or a misdemeanor.

1. First - degree fraud

If the value of the property obtained by the defendant or lost by the victim is $250 or more, ten years' imprisonment, a fine of $5,000 or three times the value of the property - whichever is more, or both.

If the value of the property is less than $250, one year imprisonment, a $1,000 fine or both.

2. Second - degree fraud

If the value of the property which was the object of the scheme was $250 or more, three years' imprisonment, a fine of $3,000 or three times the value of the object property - whichever is greater, or both.

If the value of the object property is less than $250, one year imprisonment, a $1,000 fine or both.

3. General Penalty Provisions

(1) Section 3803(a) provides that defendants cannot be sentenced consecutively for fraud and theft.

(2) Section 3901 provides for an enhanced penalty of up to 1 1/2 times the maximum term of imprisonment or potential fine for fraud against persons 60 years of age or older. This is an element of the offense which must be pleaded in the indictment and proven at trial.

(3) Under Section 3802, the amounts taken or lost can be aggregated to raise a series of misdemeanors to a felony as long as the aggregated events are part of a single scheme or course of conduct.

CREDIT CARD FRAUD

A. The Statute - 22 D.C. Code §3823

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

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

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

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

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

(4) representing that he or she is the holder of a credit card and the credit card has not in fact been issued.

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

(d) Penalties.

(1) Any person convicted of credit card fraud shall be fined not more than $5,000 or imprisoned for not more than ten years, or both, if the value of the property obtained is $250 or more.

(2) Any person convicted of credit card fraud shall be fined not more than $1,000 or imprisoned for not more than one year, or both, if the value of the property obtained is less than $250.

B. Elements and Discussion

1. The statute prohibits four types of conduct:

a) Using some else' credit card without permission;

b) Using a revoked or cancelled credit card;

c) Using a falsified, multilated or altered credit card; or

d) Representing that one is the holder of a credit card which had not been issued.

It covers any of the typical uses of credit cards including the use of numbers only as when calling mail order firms and ordering goods by giving credit card numbers. In addition, the definition of credit card under subsection (a) would cover virtually any type of card or instrument which can be used to obtain property or services, e.g., parking lot entry cards, automatic bank teller cards, special admission or private club cards, etc.

In order to charge the use of a cancelled or revoked card, actual receipt of the cancellation or revocation notice by the card holder (not necessarily the defendant) must be proven. If the defendant is the card holder, we will in most instances have to have the issuer's return receipt of the cancellation or revocation notice before we can go forward.

2. With intent to defraud

This is the standard intent element covered by the Redbook instruction 3.04, i.e., a specific intent to deceive or cheat (either the cardholder, issuer or vendor) for the purpose of the defendant's financial gain.

3. Obtains property

The statute requires that the defendant actually receive goods or services. Again refer to Section 3801 (3) (4) and (5) for the full definition of "property."

3. Penalties

1) $5,000 fine, or 10 years imprisonment or both; if the value of the property (or services) obtained is $250 or more.

2) $1,000 fine, one year imprisonment or both; if the value of the property is less than $250.

Note: Under Section 3802, in credit card fraud cases we can aggregate the amounts received during a "single" scheme or systematic course of conduct" to determine the grade of the offense i.e., to raise a number of misdemeanors to one felony. However we can only aggregate amounts received during a consecutive 7-day period. (The 7-day limitation applies only to credit card fraud).

FRAUDULENT REGISTRATION

1. The statute 22 D.C. Code § 3824

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

(b) Any person convicted of fraudulent registration shall be fined not more than $300 or imprisonment for not more than 90 days, or both.

B. Elements and Discussion

(a) Registers under a false name or address.

(b) With the intent to defraud.

Clearly, the simple use of a false name or address is not enough in and of itself to infer an intent to defraud. We must show that the defendant actually left without paying or arranged to charge his rent or expenses to the phony name or address. If the defendant actually obtained goods or services, he could be charged either with theft or fraud but this offense is an available lesser-included which is not jury demandable. (See penalties). This section replaces old 22-1301(c) which is repealed.

C. Penalties

$300 or 90 days imprisonment or both. Not jury demandable.

TRAFFICKING IN STOLEN PROPERTY

1. The Statute - 22 D.C. Code §3831

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

(1) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of property to another person as consideration for anything of value; or

(2) to buy, receive possess, or obtain control of property with intent to do any of the acts set forth in paragraph (1).

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

(c) It shall not be a defense to a prosecution under this section that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(d) Any person convicted of trafficking in stolen property shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

2. Elements and Discussion

1. That the defendant sold, pledged, transferred, distributed, dispensed or otherwise disposed of property to another person in return for anything of value or that the defendant bought, received, possesed, or obtained control of property with the intent to sell, pledge, transfer, distribute, dispense, or otherwise disposed of it in return for anything of value.

In other words that he bought, received or possessed the property with the intent to deal it away later for anything of value;

(2) That, at the time he did so, he knew or had reason to believe that the property was stolen.

It is no defense that the property was not in fact stolen. The offense is committed if the defendant dealt with the property while believing that it was stolen; and

3. That the defendant did so on two or more separate occasions.

Where the indictment lists more than two separate incidents in support of this charge, the court must instruct the jury that, in order to return a guilty verdict, they must unanimously agree on the same two (or more) incidents. Hawkins v. United States, 434 A.2d 446 (D.C. Ct. App. 1981); Johnson v. United States, 398 A.2d 354, 368-369 (D.C. Ct. App. 1979).

The Committee Report notes that the statute is aimed at "professional fences," that is, persons who are in the business of repeatedly dealing in stolen property, as distinguished from persons who purchase or receive stolen property for their own use. There is no requisite minimum value for the proprty involved. Nor need the property actually have been stolen. It is sufficient that the defendant had reason to believe it is stolen. Subsection (c) explicitly provides that it is no defense that the property was not in fact stolen, thus eliminating the defense of legal or factual impossibility. The Committee Report notes that this provision was inserted at the request of this Office to permit the prosecution of fences caught in undercover operations where the police may be using property that is not really stolen although it is portrayed as being "hot."

C. Penalties

Ten years, $10,000 or both.

RECEIVING STOLEN PROPERTY

A. The Statute - 22 D.C. Code §3832

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

(b) It shall not be a defense to a prosecution for an attempt to commit the offense described in this section that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(a) Penalties.

(1) Any person convicted of receiving stolen property shall be fined not more than $5,000 or imprisoned not more than 7 years, or both if the value of the stolen property is $250 or more.

(2) Any person convicted of receiving stolen property shall be fined not more than $1,000 or imprisoned not more than 1 year, or both, if the value of the stolen property is less than $250.

B. Elements and Discussion

(a) That the property in question has been stolen by someone;

(b) That the defendant bought, received, possessed or obtained control of the stolen property;

(c) That, at the time he did so, he knew or had reason to believe that the property was stolen;

(d) That he brought, received, possessed or obtained control of the property with specific intent to deprive another of the right to the property or a benefit of the property; and

(e) That the property so received, bought, possessed or obtained was of [the value of $250 or more] [some value].

The Committee Report notes that the newly defined offense "basically carries forward the current law." There have been some changes in terminology. Some are minor. For example, the offense now refers to stolen "property" instead of stolen goods," and speaks in terms of the defendant's "reason" to believe the items were stolen instead of "cause" to so believe. Other changes are more significant. First, instead "receive[s] or buy[s]" stolen items, the new statute uses the broader terms of "buys, receives, possesses or obtains control of" stolen property. Under existing law a defendant's possession of stolen property was sufficient to permit an inference of "receipt," see, e.g., Inman v. United States, 100 U.S. App. D.C. 150, 243 F.2d 256 (1957), but the new formulation eliminates any possible issue on this score. Moreover, this formulation apparently enables us to prosecute a defendant anytime he is found in possession of stolen property here in D.C. regardless of where he first "received" it. Thus, for example, in UUV cases where the car was stolen in another

jurisdiction, we should be able to prosecute for RSP as well as UUV. Second, instead of requiring an "intent to defraud," the new statute requires "intent to deprive another of the right to the property or a benefit of the property." The Committee Report describes this as a specific intent. In practical terms, this new formulation of the required intent is much the same as the traditional "intent to defraud" but the new formulation is somewhat broader and, hopefully, more comprehensive to the average juror.

Both the felony and misdemeanor offense of receiving stolen property require that the goods must in fact have been stolen by someone. However subsection (b) of the new statute explicitly provides that it shall not be a defense to a prosecution for the misdemeanor charge of attempt to commit the offense that the property was not in fact stolen. This parallels a similar provision with respect to the felony charge of Trafficking in Stolen Property. These provisions were explicitly adopted to permit prosecution of defendants caught through undercover operations where the police may be using property which is not really stolen although it is portrayed as being "hot." However, since the Trafficking provision is aimed at professional fences, the fact that the property involved is not stolen is irrelevant and does not preclude felony prosecution. In the "lesser" situation where the potential charge would be receiving stolen property, the fact that the property is not really stolen would require breakdown for misdemeanor prosecution.

C. Penalties

Two of the most significant changes in the law regarding receipt of stolen property concern the penalty structure for the offense and the break-point between a misdemeanor and a felony offense. The break-point is increased from $100 to $250. The maximum penalty for the misdemeanor offense remains one year's imprisonment, but the fine (which can be imposed in lieu of, or in addition to jail time) has been increased form $500 to $1000. The maximum penalty for the felony offense has been reduced from 10 years to 7 years' imprisonment. However a provision for a fine has been added so that the court can impose up to a $5000 fine in lieu of, or in addition to, a term of imprisonment.

FORGERY AND UTTERING

A. The Statute - 22 D.C. Code §3841-42

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

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

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

(B) contains a false addition or insertion; or

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

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

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

(A) security, bill of lading, document of title, draft, check, certificate of deposit, and letter of credit, as defined in title 28, D.C. Code;

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

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

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

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

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

22 D.C. Code §3842 - Penalties

(a) Any person convicted of forgery shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both, if the written instrument purports to be:

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

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

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

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

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

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

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

(b) Any person convicted of forgery shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both, if the written instrument is or purports to be:

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

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

(3) a written instrument having a value of $250 or more.

(c) Any person convicted of forgery shall be fined not more than $2,500 or imprisoned for not more than 3 years, or both, in any other case.

B. Elements and Discussion

Forgery

1. The defendant made or drew a forged written instrument.

See Subsection (a)(1) and (3) for definitions of "forged" and "written instrument."

2. That the defendant made or drew the forged written instrument with specific intent to defraud or injure another.

It is not necessary that anyone have actually been defrauded, of that the defendant have had the intent to defraud any particular person, either an individual or a bank. It is necessary only that the defendant have had the intent to defraud someone. Intent to defraud is not to be presumed from the mere making or drawing of a forged written instrument. It may be found on the basis of some affirmative act, such as the passing of the forged written instrument, or on the basis of other circumstances from which such an intent be be inferred. It is not necessary that anyone have actually suffered loss.

3. That the forged written instrument was apparently capable of effecting a fraud.

It is necessary that the forged written instrument have been reasonably adapted to deceive another person into relying on the writting as true and genuine. It is not necessary that the forged document was accurate enough to deceive a bank or the payor of the writing, but if it was such that no person of ordinary intelligence could reasonably have been deceived, this element of the offense is lacking.

4. That the forged written instrument purported to be one of the enumerated types of documents listed in the penalty section.

The type of document dictates the severity of punishment. See Penalty section below.

B. UTTERING

1. That the writing in question was a forged written instrument;

2. That the forged written instrument purported to be one of the type of documents listed in the penalty section;

3. That the defendant transferred, published, sold, delivered, displayed, used, authenticated or certified the forged document to someone representing the document to be true and genuine;

4. That the defendant did so knowing that the instrument was forged;

5. That the defendant acted with the specific intent to defraud; and

6. That the instrument was apparently capable of effecting a fraud.

This new forgery statute differs substantially from existing law, principally in the nature of the documents covered by the provision. The present statute covers "any writing of a public or private nature, which might operate to the prejudice of another." This extremely broad definition is significantly narrowed by the new statute, which covers only "written instruments." While the statute refers only to "written instruments," 22 D.C. Code §3841 (a)(3), basically that definition includes only various sorts of official or commercial paper and documents, such as checks, money orders, stocks, securities, etc. It presumably does not include credit card slips (which would be specifically covered by the new credit card fraud statute, 22 D.C. Code §3823) nor does it appear to include private documents such as, for example, forged time slips.

The Committee Report states that the definition of the offense in the new law carries foward the current law, and as in the prior statute, contains the two separate offenses of forgery and uttering. However, the new graded penalty system described below creates an additional element of the offense if we are charging a defendant with having forged a written instrument which falls within either of the first two penalty tiers. It will be necessary, at least in "third tier" cases, to define the term "written instrument" in instructing the jury. This task plainly will be more onerous and potentially more confusing than simply instructing them, as is now done, that the document can be "any writing. . . which might operate to the prejudice of another." Indeed, these changes in the new law require new forms for indictments and jury instructions which resemble Chinese menus.

C. Penalties

The new statute creates a three-tiered system of penalties depending on the nature or dollar amount of the forged written instrument involved. 22 D.C. Code §3842. Thus, in terms of everyday practice, the specification of various sorts of written instruments within this graded penalty system is more important than the general definition of "written instruments" contained in §3841. Many of the common sorts of written instruments are explicitly mentioned in the penalty statute, making reference to the general definition necessary only when dealing with a document not otherwise specifically enumerated. The first, most severe penalty tier provides for a $10,000 fine, 10 years' imprisonment, or both. §3842(a). The most common documents covered in this tier are government checks, payroll checks (provided they appear to be such on their face), public records, and any written instrument having a value of $10,000 or more. The second penalty tier provides for a $5,000 fine, 5 years' imprisonment, or both. §3824(b). The most common documents covered in this ties would be forged prescriptions and written instruments having a value of $250 or more. The third penalty tier is a catch-all, covering all written instruments not enumerated in either of the first two tiers. It provides for a $2500 fine, 3 years' imprisonment, or both. §3842(c). The most common documents falling under this provision would be personal checks under $250.

The following are the forged written instruments listed under the 10 year penalty section in D.C. Code §22-3842(a):

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

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

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

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

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

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

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

Following are the instruments listed under the five year penalty section, §22-3842(b):

> (1) a token, fare card, public transportation transfer certificate, or other article manufactured for use as a symbol of value in place of money for the purchase of property or services:
>
> (2) a prescription of a duly licensed physician or other person authorized to issue the same for any controlled substance or other instrument or devices in the making or administering of controlled substances for which a prescription is required by law; or
>
> (3) a written instrument having a value of $250 or more.

Under §22-3842(c), forgery or uttering of any other written instrument under §22-3841(a)(3), including, by elimination, a written instrument with a value of less than $250, brings a maximum of 3 years imprisonment.

EXTORTION

A. The Statute - 22 D.C. Code §3851

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

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

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

B. Elements and Discussion

(a) Obtaining or attempting to obtain property of another;

(b) With the victim's consent

(c) By

(1) actual or threatened force or violence;

(2) wrongful threat of economic injury; or

(3) under the color or pretense of official right.

The provision is derived from the definition of extortion as set out in 18 U.S. Code §1951 (Hobbs Act) and substantially alters and expands the now repealed 22 D.C. Code §2306, Intent to Commit Extortion, which focused on threats to kidnap, injure or destroy the reputation of another. Threats to another's reputation is now covered in the new Blackmail section (§3852), and extortion has been expanded to cover threats of economic injury, not present in the old law, and extortion under color of official right which existed under common law but was not part of the D.C. Code.

Threats of force or violence covers not only threats of personal injury or kidnapping but threats of property damage. The term "threat of economic injury" is qualified by the word "wrongful" to eliminate legitimate threats of labor strikes, consumer boycotts or other legitimate economic pressures. However, if a labor official threatens a strike or a consumer advocate threatens a boycott unless that person receives something of value for himself or for some other entity unrelated to the union or interest group which he represents, such a threat would constitute extortion.

The prohibition against obtaining or attempting to obtain property under color of official right under Subsection (a)(2) essentially covers the reverse of bribery of a public official. The difference between this subsection and the new bribery statute (see discussion of 22 D.C. Code §§711-713, infra) is that here the public official need not promise or agree to take official action in return for the payment. Extortion "under color of official right" is established whenever the evidence shows beyond a reasonable doubt the wrongful taking by a public officer of money not due him or his office, whether or not the taking was accomplished by force, threats, or use of fear. It does not matter whether the public official induces payments to perform his duties or not to perform his duties, so long as motivation for payment focuses on the recipient's office. Proof of extortion "under color of official right" thus requires a showing that the extorted party had at least a reasonalbe belief that the offender had the official power through which the extorition was performed. There is no requirement that the official have the actual power needed to perfom that act which is the basis of the extortionate scheme.

C. Penalties

a. Ten years, $10,000 or both (cuts in half the old penalty of 20 years but doubles the old fine of $5,000).

b. Note: Extortion is one of the offenses listed under the enhancement of penalties for crimes against senior

BLACKMAIL

A. The Statute - 22 D.C. Code §3852

> (a) A person commits the offense of blackmail, if, with intent to obtain property of another or to cause another to do or refrain from doing any act, that person threatens:
>
> (1) to accuse any person of a crime;
>
> (2) to expose a secret or publicize an asserted fact, whether true of false, tending to subject any person to hatred, contempt, or riducule; or
>
> (3) to impair the reputation of any person, including a deceased person.
>
> (b) Any person convicted of blackmail shall be fined not more than $1,000 or imprisoned for not more than 5 years, or both.

B. Elements and Discussion

(1) Threatening to:

(a) accuse another of a crime;

(b) expose a secret or an asserted fact, whether true or false, tending to subject another to hatred, contempt or ridicule; or

(c) impair the reputation of another, whether living or dead.

This provision, while simplifying the language of the old statute, 22 D.C. Code §2305, prohibits the same type of threats with one exception. The threat to impair someone else's reputation was specifically covered in the old extortion statute, 22 D.C. Code §2306, although it arguably applied to both extortion and blackmail. Under the new statute, any threats to injure someone's reputation is covered exclusively by the blackmail provision.

(2) With the intent to obtain property of another or to cause another to do or refrain from doing any act.

The intent element here is the same as under the previous statute, except that the term "property of another," which is defined in Section 3801, replaces the wording "anything of value or any precuniary advantage."

C. Penalties

Five years, $1,000 or both.

BRIBERY

1. The Statute - 22 D.C. Code §§711-713

22 D.C. Code §711: For the purposes of this title, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Juror" means any grand, petit, or other juror, or any persons selected or summoned as a prospective juror of the District of Columbia.

(3) "Official action" means any decision, opinion, recommendation, judgement, vote or other conduct that invovles an exercise of discretion on the part of the public servant.

(4) "Official duty" means any required conduct that does not involve an exercise of discretion on the part of the public servant.

(5) "Official proceedings" means any trial, hearing, or other proceedings in any court of the District of Columbia government.

(6) "Public servant" means any officer, employee or other person authorized to act for or on behalf of the District of Columbia government. The term "public servant" includes any person who has been elected, nominated, or appointed to be a public servant or a juror. The term "public servant" does not inlcude an independent contrator.

22 D.C. Code §712 - Bribery

(a) A person commits the offense of bribery if, that person:

(1) corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(2) corruptly solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant;

in return for an agreement or understanding that an official act of such public servant will be influenced thereby or that such public servant will violate an official duty, or that such public servant will commit, aid in committing or will collude in or allow any fraud against the District of Columbia.

(b) Nothing in this section shall be construed as prohibiting concurrence in official action in the course of legitimate compromise between public servants.

(c) Any person convicted of bribery shall be fined not more than $25,000 or 3 times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than ten years, or both.

22 D.C. Code §713 - Bribery of a Witness

(a) A person commits the offense of bribery of a witness if that person;

(1) corruptly offers, gives, or agrees to give another person; or

(2) corruptly solicits, demands, accepts, or agrees to accept from another person;

anything of value in return for an agreem ent or udnerstanding that the testimony of the recipient will be influenced in an official proceedings before any court of the District of Columbia government, or that the recipient will absent himself from such proceedings.

(b) Nothing in subsection (a) shall be construed to prohibit the payment or receipt of witness fees provided by law, or the payment by the party upon whose behalf a witness is called and receipt by a witness of a reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such proceedings, or, in the case of the expert witnesses, a reasonable fee for time spent in the preparation of a technicial or professional opinion and appearing and testifying.

B. Elements and Discussion

Bribery of or by a Public Servant or Juror

1. That the defendant offered, gave or agreed to give anything of value, directly or indirectly, to a public servant [for cases where defendant is not a public servant];

OR

That the defendant solicited, demanded, accepted or agreed to accept anything of value, directly or indirectly, as a public servant/juror [for cases where the defendant is a public servant or juror];

2. That the defendant acted with a corrupt intent (See discussion below)

3. That the defendant's actions were in return for an agreement or understanding that an official act of the public servant/defendant would be influenced thereby or that the public servant/defendant would commit, aid in committing, collude in or allow any fraud against the District of Columbia.

[illegible] or by a witness

1. [illegible] defendant offered, gave or agreed to give anything of value to a witness [for cases where the defendant is not a witness];

OR

[illegible] defendant solicited, demanded, accepted or agreed to accept anything of value from another person [for cases where the defendant is a witness];

2. [illegible] defendant acted with corrupt intent; and

3. [illegible] defendant's actions were in return for an agreement or understanding that the testimony of the witness/defendant would be influenced in an official proceeding before any court of the District of Columbia or any agency or department of the District of Columbia government or that the witness/defendant would absent himself of herself from such proceeding.

[illegible]ost significant change in th law regarding bribery [illegible] the expansion of the statutes to cover situations [illegible] public servant, juror or witness solicits a bribe. [illegible] pre-existing statute, 22 D.C. Code §701, only the [illegible] or giving a bribe to a public servant, juror or [illegible]as prohibited. The reverse situation, where a [illegible]ervant, juror or witness solicited a bribe, was not [illegible]lly prohibited. The new statutes, 22 D.C. Code §§ [illegible]13, cover both of these situations.

[illegible]ode Section 22-712 addresses the situation where [illegible]dual either directly or indirectly corruptly offers, [illegible] agrees to give anything of value to a public servant [illegible]atively where a public servant either directly or [illegible]y corruptly solicits, accepts or agrees to accept [illegible] of value in return for an agreement or understanding [illegible]fficial act of the public servant will be influenced [illegible]r the public servant will violate an official duty [illegible]blic servant will commit, aid in committing, collude [illegible]ow any fraud against the District of Columbia.

Both public servants and jurors are covered by 22 D C. Code § 712. These terms are defined in 22 D.C. Code §711. The term public servant includes any officer, employee, or other person authorized to act on behalf of the District of Columbia. It also includes any person elected, nominated or appointed to be a public servant of juror. Independent contractors are specifically excluded from the definition of public servant.

The "directly or indirectly" language is intended to cover situations where a middle-man is used in the bribery scheme or where it is agreed that the thing of value will be given to an individual or organization, other than the public servant being bribed, in return for his or her being influenced. The term "anything of value" is defined in 22 D.C. Code §3802 to mean anything possessing actual as well as intrinsic value.

The acts which are prohibited under 22 D.C. Code §§712 and and 713 include offering a bribe as well as actually giving or receiving a bribe. This covers not only situations where the bribery attempt is actually successful but also situations where the attempt is unsuccessful. For example, if any individual offers something of value to a public servant that he or she will be influenced thereby and the public servant refuses, the person offering the bribe to the public servant can be found guilty of bribery under 22 D.C. Code §712.

Both 22 D.C. Code §§ 712 and 713, specify that the acts of bribery described in those sections must be done "corruptly." This is the same language used in Federal bribery statutes (18 U.S.C. §201(b) and (c)) and requires proof of a high degree of criminal knowledge. The term "corruptly" has been used to indicate that the act must be done "voluntarily and intentionally with the bad purpose of accomplishing either an unlawful end or result or a lawful end or result by some unlawful method or means." (Devitt & Blackmar, Federal Practice and Jury Instructions, §34.08).

In order to proceed under 22 D.C. Code §712 it must be established that the act of bribery was done "in return for" an agreement or understanding that an official act of the public servant will be influenced or the public servant will violate an official duty or the public servant will commit, aid in committing collude in or allow any fraud against the District of Columbia. This language is intended to capture the concept of quid pro quo which has traditionally been the crux of the offense of bribery.

D.C. Code 22-713 prohibits the bribery of a witness. As with 22 D.C. Code §712, the pre-existing statute, 22 D.C. Code §701, has been expanded to cover both situations where a witness is bribed as well as where a witness solicits a bribe. Section 22-713 prohibits corruptly offering or giving anything of value to a witness or a witness soliciting or accepting anything of value in return for an agreement or understanding that the testimony of the witness will be influenced or that the witness will absent himself or herself from the proceedings in which he or she is scheduled to appear.

Section 22-712 does not contain the "directly or indirectly" language of 22 D.C. Code §712. Therefore, it is unclear whether the statute would apply to a situation where a witness is bribed but the thing of value is given to a individual or organization other than the witness being bribed. The Legislative History does not address this issue.

C. PENALTIES

Bribery - 10 years and/or a fine of $25,000 or three times the amount of the bribe, whichever is more (§712(c)).

Bribery of a Witness - 5 years, $2500, or both (§713(c)).

PERJURY

A. The Statute - 22 D.C. Code §2511

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

(1) having taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered, that he or she will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by that person subscribed is true, wilfully and contrary to an oath or affirmation states or subscribes any material matter which he or she does not believe to be true and which in fact is not true.

(2) as a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully fully certifies falsely as to another material matter in acknowledgement.

(b) Any person convicted of perjury shall be fined not more than $5,000 or imprisoned for not more than 10 years or both.

B. ELEMENTS

A. PERJURY - Subsection (a)(1)

(1) That the defendant appeared before a competent tribunal, officer or person;

(2) That a lawfully authorized oath of affirmation was properly administered to the defendant;

(3) That the defendant gave testimony which he knew to be false and which was in fact false;

(4) That the defendant wilfully gave this testimony; and

(5) That the testimony pertained to any matter material to the tribunal, officer, or person before which the defendant testified.

Other than stylistic changes, D.C. Code Section 22-2511 precisely tracks the language of D.C. Code Section 22-2501, the existing perjury statute, with a single exception: the perjurious statement or representation must be in fact not true ("...and which in fact is not true;). This change, however, is designed only to clear an ambiguity in the current law rather than to effect a substantive change, since it routinely has been argued that actual falsity must be established in order to support a conviction. See U.S. Attorney's Criminal Trial Manual, p.410 for a full explanation of perjury.

B. False Certification by Notaries and Other Officers - Subsection (a)(2)

(1) That the defendant was a notary public or other officer authorized to take proof of certification; and

(2) That the defendant [certified falsely that an instrument was acknowledged by a party thereto] [certified falsely as to any material in an acknowledgement]

3. That the defendant did so wilfully.

D.C. Code Section 2511(a)(2) supercedes D.C. Code Section 1308, and proscribes false certifications by notaries and certain other officers. The two are identical in the illegal conduct which they define, but Section 2511(a)(2) expands somewhat the group of defendants whose acts fall within its provisions. Included in the new provisions are those persons who are authorized to take proof or certification as to an oath or affirmation of acknowledgment of an instrument rather than just officers authorized to take proof of acknowledgement of an instrument which may be recorded. Additionally, the legislative history claims that "this section also covers new who act 'as a notary or other officer' even if that person is not in fact authorized to take proof or acknowledgement of an instrument."

C. Penalties

For both (a)(1) and (a)(2) violations, 10 years, $5,000 or both. This penalty provision modifies the old penalties by adding a $5,000 fine and ommitting the prior two-year mandatory minimum.

SUBORNATION OF PERJURY

A. The Statute - 22 D.C. Code §2512

> A person commits the offense of subornation of perjury if that person wilfully procures another to commit perjury. Any person convicted of subornation of perjury shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both.

B. Elements and Discussion

1. That the defendant procured another to commit perjury; and

2. That the defendant did so wilfully.

Under current law, no statutory definition of the crime of subornation of perjury exits. D.C. Code Section 22-2512 fills this void. The legislative history of Section 2512 explains that the common law definition of subornation of perjury is simply restated in the newly enacted provision, and no change in the law is anticipated. Thus, by the use of "procure" as the operative term in the new provision, the leglislature did not intend to modify the common law principle that for one to suborn perjury, the perjury had to have occurred.

A. Penalties

Same as Perjury.

FALSE SWEARING

A. The Statute - 22 D.C. Code §2513

> (a) A person commits the offense of false swearing if under oath or affirmation he or she wilfully makes a false statement, in writing, that is in fact material and the statement is one which is required by law to be sworn of affirmed before a notary public or other person authorized to administer oaths.
>
> (b) Any person convicted of false swearing shall be fined not more than $2,500 or imprisoned for not more than 3 years, or both

B. Elements and Discussion

1. That the defendant made a statement that he knew to be false and which was in fact false;

2. That the statement was made after a lawfully authorized oath or affirmation was properly administered to the defendant;

3. That the statement was made in writing;

4. That the defendant made the statement wilfully;

5. That the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; and

6. That the statement is material to the matter to which it pertains.

This new offense is intended to protect the integrity of documents affirmed or acknowledged by notaries. Accordingly, there is no requirement that the false statement be made before a tribunal. It is not inconceivable that we will experience numerous requests to prosecute violations of this provision by, inter alia, disappointed civil litigants.

C. Penalties

Three years, $2,500 or both.

FALSE STATEMENTS

A. The Statute - 22 D.C. Code §2514

(a) A person commits the offense of making false statements if that person wilfully makes a false statement that is in fact material, in writing, directly or indirectly, to any instrumentality of the District of Columbia government, under circumstances in which the statement could reasonably be expected to be relied upon as true: PROVIDED, That the writing indicates that the making of a false statement is punishable by criminal penalties.

(b) Any person convicted of making false statements shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both.

B. Elements and Discussion

(a) That the defendant made a false statement;

(b) That the false statement was made wilfully;

(c) That the false statement was made in writing;

(d) That the false statement was made, directly or indirectly, to an instrumentality of the District of Columbia Government;

(e) That the statement could be reasonably expected to be relied upon by that governmental instrumentality as true; and

(f) That a warning is contained within the writing that the making of a false statement is punishable by criminal penalties.

This section prohibits the making of false statements in writing to a District of Columbia governmental entity, provided that the statement is made in writing and that the document on which the false statement is made warns of criminal penalties for misrepresentations or false statements. The statute is intended to fill gaps in current law, which proscribes false statements only in specific situations.

C. Penalties

One year, $1,000, or both.

OBSTRUCTION OF JUSTICE

A. The Statute - 22 D.C. Code §§721-722

Sec. 721. Definitions for Obstruction of Justice.

For the purpose of this title, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia of Appeals.

(2) "Criminal investigator" means an individual authorized by the Mayor's designated agent to conduct or engage in a criminal investigation, or a prosecuting attorney conducting or engaged in a criminal investigation.

(3) "Criminal investigation" means an investigation of a violation of any criminal statute in effect in the District of Columbia.

(4) "Official proceeding" means any trial, hearing, or other proceeding in any court of the District of Columbia or any agency or department of the District of Columbia government.

Sec. 722 Obstruction of Justice

(a) A person commits the offense of obstruction of justice if that person:

(1) corruptly, or by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court of the District of Columbia in the discharge of his or her duties;

2. Knowing or having reason to believe an official proceeding had begun or is likely to be instituted;

The term "official proceeding" as defined is Section 721(4) refers to any trial, hearing or other proceeding in any court, agency or department of the District of Columbia government. This obviously would apply to administrative hearings as well as criminal and civil trials. The element of knowing or having reason to believe an official proceeding "is likely to be instituted" is intended to cover situations where a defendant destroys evidence in anticipation of being arrested, sued or otherwise being called to task is some proceeding. The difficulties of proof in that case are obvious and any prosecution for the destruction of records pre-arrest or pre-notification of the pendency of an official proceeding must be based on more than the simple fact of the destruction. There must be clear evidence that the defendant was aware of his potential liability and although not yet arrested or notified of the proceeding, destroyed the evidence in anticipation of his likely being arrested or so notified.

3. The act of destroying, altering, concealment or removing the document or object was done with the specific intent to impair its integrity or availability for use in the proceeding.

C. Penalties

Three years, $1,000 or both.