First Draft of Report #55 – Failure to Appear and Violation of Conditions of Release Offenses

SUBMITTED FOR ADVISORY GROUP REVIEW
May 18, 2020

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
441 FOURTH STREET, NW, SUITE 1C001 SOUTH
WASHINGTON, DC 20001
PHONE: (202) 442-8715
www.ccrc.dc.gov

This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at www.ccrc.dc.gov.

This Draft Report has two parts: (1) draft statutory text for a new Title 22E of the D.C. Code; and (2) commentary on the draft statutory text. The commentary explains the meaning of each provision, considers whether existing District law would be changed by the provision (and if so, why this change is being recommended), and addresses the provision's relationship to code reforms in other jurisdictions, as well as recommendations by the American Law Institute and other experts.

Any Advisory Group member may submit written comments on any aspect of this Draft Report to the D.C. Criminal Code Reform Commission. The Commission will consider all written comments that are timely received from Advisory Group members. Additional versions of this Draft Report may be issued for Advisory Group review, depending on the nature and extent of the Advisory Group's written comments. The D.C. Criminal Code Reform Commission's final recommendations to the Council and Mayor for comprehensive criminal code reform will be based on the Advisory Group's timely written comments and approved by a majority of the Advisory Group's voting members.

The deadline for the Advisory Group's written comments on this First Draft of Report #55 – Failure to Appear Offenses is June 19, 2020. Oral comments and written comments received after this date may not be reflected in the next draft or final recommendations. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

D.C. Code Statutes Outside Title 22 Recommended for Revision

§ 23-586.	Failure to Appear after Release on Citation or Bench Warrant Bond. {D.C. Code § 23-585(b)}
§ 23-1327.	Failure to Appear in Violation of a Court Order. {D.C. Code § 23-1327}
§ 23-1329A.	Criminal Contempt for Violation of a Release Condition. {D.C. Code § 23-1329(a-1) and (c)}
§ 16-1005A.	Criminal Contempt for Violation of a Civil Protection Order. {D.C. Code §§ 16-1005(f) – (i)}
§ 24-241.05A.	Violation of Work Release. {D.C. Code § 24-241.05(b)}

* No corresponding statute in current D.C. Code. {…} Corresponding statute(s) in D.C. Code.

RCC § 23-586. Failure to Appear after Release on Citation or Bench Warrant Bond.

(a) *First degree*. A person commits first degree failure to appear after release on citation or bench warrant bond when that person:
  (1) Knows they are released on a condition to appear before a judicial officer on a specified date and time either:
    (A) By a citation that, in fact, is issued under D.C. Code § 23-584 for a felony; or
    (B) After knowingly posting a bond that is, in fact, for a bench warrant issued from the Superior Court for the District of Columbia in a felony case; and
  (2) Knowingly fails to appear or remain for the hearing.

(b) *Second degree.* A person commits second degree failure to appear after release on citation or bench warrant bond when that person:
  (1) Knows they are released on a condition to appear before a judicial officer on a specified date and time either:
    (A) By a citation that, in fact, is issued under D.C. Code § 23-584 for a felony or misdemeanor; or
    (B) After knowingly posting a bond that is, in fact, for a bench warrant issued from the Superior Court for the District of Columbia in a felony or misdemeanor case; and
  (2) Knowingly fails to appear or remain for the hearing.

(c) *Defense*. A person does not commit an offense under this section when, in fact, a releasing official, prosecutor, or judicial officer gives effective consent to the conduct constituting the offense.

(d) *Penalties*.
  (1) First degree failure to appear after release on citation or bench warrant bond is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) Second degree failure to appear after release on citation or bench warrant bond is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Definitions*.
  (1) The term "knows" has the meaning specified in RCC § 22E-206; the term "in fact" has the meaning specified in RCC § 22E-207; and the terms "effective consent," "felony," and "misdemeanor" have the meanings specified in RCC § 22E-701.
  (2) In this section, the term "judicial officer" has the meaning specified in D.C. Code § 23-501.
  (3) In this section, the term "releasing official" has the meaning specified in D.C. Code § 23-1110.

(f) *Interpretation of statute.* Chapters 1 through 6 of Subtitle I of Title 22E apply to this offense.

COMMENTARY

Explanatory Note. *This section establishes the failure to appear after release on citation or bench warrant bond offense for the Revised Criminal Code (RCC). The offense prohibits knowingly failing to appear for a hearing after being released on citation and ordered to appear under D.C. Code § 23-584. It replaces subsection (b) of D.C. Code § 23-585, failure to appear.*

Subsection (a) specifies the elements of first degree failure to appear after release on citation or bench warrant bond. Paragraph (a)(1) requires that the person was required to appear before a judicial officer on a specified date and time for a felony offense. The term "judicial officer" is a defined term under D.C. Code § 23-501.[1] The term "appear" is not defined and should be construed broadly to include all types of appearances, including both in-person and virtual hearings. The term "knows" is defined in RCC § 22E-206 and here requires that the person is practically certain that they are required by a citation or by a bench warrant to appear at a specific date and time.[2] Under RCC § 22E-208(d), knowledge may be imputed if the person is reckless as to whether a circumstance exists and, with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists. Applied here, knowledge may be imputed when a person consciously disregards a substantial risk that that they are required to appear before a judicial officer on a specified date and time, and to avoid liability avoids confirming or fails to investigate whether they are required to appear at a specified date and time.[3] The term "in fact" indicates that the accused is strictly liable with respect to whether a citation was issued under D.C. Code § 23-584,[4] which authorizes law enforcement officers to release arrestees to appear before a judge at a later date (with or without conditions[5]), or a bond was posted pursuant to a Superior Court bench warrant. The term "in fact" also indicates that the accused is strictly liable with respect to whether the offense for which they were cited is a felony, as defined in RCC § 22E-701.[6]

Paragraph (a)(2) requires that the person fail to appear at the time specified in the court's order or to remain until excused by a judicial officer. The terms "appear" and "judicial officer" have the same meaning as in paragraph (a)(1). Paragraph (a)(2) specifies that the person must act knowingly, a term defined in RCC § 22E-206, which here means that the person must be practically certain that they failed to appear or remain

---

[1] D.C Code § 23-501(1) ("The term 'judicial officer' means a judge of the Superior Court of the District of Columbia or of the United States District Court for the District of Columbia, or a United States commissioner or magistrate for the District of Columbia.").

[2] Consider, for example, a person who is unable to read or understand the citation due to illiteracy or a language barrier. That person may not be practically certain that they were required to appear.

[3] Consider, for example, a person who is handed a citation to appear and angrily tears it up and throws it in the garbage before reading the date. Knowledge that they were required to appear on the specified date and time may be imputed even though they were not practically certain of it.

[4] RCC § 22E-207.

[5] Failure to abide by a condition of release is not a criminal offense but it does subject a person to being taken into custody and presented before a judicial officer. D.C Code § 23-585(a).

[6] The offense for which the person is cited may differ from the offense that is eventually charged by a prosecutor. First degree liability is dependent upon the offense the law enforcement officer indicated on the citation. It is not a defense that there was no probable cause for the felony offense.

as required.[7] Determining whether a failure to appear is knowing or inadvertent is a fact-sensitive inquiry.[8] Under RCC § 22E-203, the person's conduct must be voluntary.[9]

Subsection (b) specifies the elements of second degree failure to appear after release on citation or bench warrant bond. The elements are identical to the elements of first degree, except that first degree is limited to a felony offense and second degree applies more broadly to either a felony or misdemeanor.

Subsection (c) specifies that a person does not commit an offense when they have the effective consent of a releasing official,[10] prosecutor,[11] or judicial officer[12] to miss the hearing or arrive at a later time. "Effective consent" is a defined term and excludes consent that was obtained by the application of physical force, an express or implied coercive threat, or deception.[13] "Consent" is also defined in RCC § 22E-701. The term "in fact" indicates that the accused is strictly liable with respect to whether effective

[7] Consider, for example, a person who misunderstands when and where they are to appear because the courthouse is closed due to inclement weather or because the hearing is moved to another courtroom. The evidence must show beyond a reasonable doubt that the person was practically certain or deliberately ignorant as to when and where they needed to appear. RCC §§ 22E-206; 22E-208(d). *See, e.g., Smith v. United States*, 583 A.2d 975, 979 (D.C. 1990); *Bolan v. United States*, 587 A.2d 458, 460 (D.C. App. 1991) (reversing a conviction on sufficiency grounds where a defendant was not notified of a courtroom change).

[8] *Evans v. United States*, 133 A.3d 988, 993 (D.C. App. 2016) (explaining, "The evidence of appellant's chronic or recurring memory problems also was evidence that, if credited by the trial judge, might be deemed relevant to the court's assessment of whether appellant's failure to appear was willful. As another example, appellant testified that he 'had so much stuff going on' while his underlying marijuana-possession case was pending, including financial difficulties and housing challenges—circumstances that the trial court, if it credits appellant's testimony, may also deem relevant on the issue of willfulness.").

[9] A person does not commit failure to appear after release on citation if the absence was not subject to the person's control. For example, a person does not commit an offense if they are incarcerated, hospitalized, stranded, or unable to connect to a virtual hearing due a technological problem. *See, e.g., Foster v. United States*, 699 A.2d 1113, 1115 (D.C. App. 1997) (reversing a conviction under a similar statute where the defendant's employer unexpectedly canceled his return trip to the District); *see also Fearwell v. U.S.*, 886 A.2d 95, 101 (D.C. 2005) (holding "[I]f there is evidence—however weak—to support it, a defendant is entitled to a requested instruction that he has presented evidence of special circumstances which prevented him from appearing in court on the scheduled date and time, and that if the jury credits that evidence, this may create a reasonable doubt concerning whether the government has proven willfulness beyond a reasonable doubt."). Likewise a person does not commit an offense if they are detained by a court security officer while being searched, temporarily removed from the courthouse for a fire drill, or made to wait outside a courtroom until a non-public hearing concludes.

[10] The term "releasing official" is defined in paragraph (e)(3). Consider, for example, an officer who issues a citation and decides to withdraw it (e.g., to correct an erroneous date or to dismiss the accusation based on newly discovered evidence). The officer retrieves the citation from the accused and tells her that she is excused from appearing on the date specified. The arrestee has the effective consent of a releasing official to not appear.

[11] Consider, for example, a prosecutor who confers with defense counsel before the hearing date and notifies defense counsel that no charges will be filed (i.e. the case will be "no papered") and excuses the accused from appearing in court. The arrestee has the effective consent of a prosecutor to not appear.

[12] Consider, for example, a presiding criminal judge who reschedules all citation arrest hearings to accommodate social distancing during a global health emergency. The arrestee has the effective consent of a judicial officer to not appear.

[13] RCC § 22E-701.

consent was given.[14] It is not a defense that the person mistakenly believed that they were excused when actually they were not excused.[15]

Subsection (d) specifies the penalties for each gradation of the revised offense. [*See* Third Draft of Report #41.]

Subsection (e) cross-references applicable definitions in the RCC and the D.C. Code.

Subsection (f) specifies that Chapters 1 – 6 the RCC's General Part apply to this Title 23 offense.

Relation to Current District Law. *The revised failure to appear after release on citation statute changes current District law in three main ways.*

First, the revised statute imposes a single penalty class for all misdemeanor offenses. Current D.C. Code § 23-585(b)(1), concerning misdemeanors, imposes a maximum penalty of "not more than the maximum provided for the offense for which such citation was issued." In contrast, the revised code specifies a penalty class for every offense, including the failure to appear offenses. This change improves the consistency and proportionality of the revised statutes.

Second, the revised statute allows for higher fines for organizational defendants who violate the statute. Current D.C. Code § 23-585(b)(3) states that: "For the purposes of this section, section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C Law 19-317; D.C. Official Code § 22-357.01), shall not apply." While the main portion (subsection (b)) of section 101 of the Criminal Fine Proportionality Amendment Act of 2012 sets fines for certain classes of offenses, subsection (c) of Section 101 provides that organizational defendants are subject to heightened (double) fines. Consequently, D.C. Code § 23-585(b)(3) not only exempts the statute from the standard fine provisions applicable to most other current D.C. Code offenses, but also exempts organizational defendants from the heightened fine provisions otherwise applicable to most current D.C. Code offenses. In contrast, the revised code does not specifically exclude failure to appear violations from the higher fines applicable to organizational defendants under RCC § 22E-604(b). There is no clear rationale for treating organizational defendants differently for this particular offense. This change improves the consistency and proportionality of the revised statutes.

Third, the revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense. The current D.C. Code generally does not codify consistent definitions, rules of liability, rules of interpretation, or general defenses. In contrast, Subtitle I of Title 22E sets forth broadly applicable rules and definitions relating to the basic requirements of criminal liability, inchoate liability, justification defenses, and penalty enhancements. Application of these general provisions to the revised offense may change District law in numerous ways. For more in-depth discussion of these general provisions, see commentary accompanying statutory provisions in Subtitle I of Title 22E. These changes improve the clarity, consistency, completeness, and proportionality of the revised offense.

[14] RCC § 22E-207.

[15] Consider, for example, a person who mistakenly believes they may leave the courtroom temporarily to use the bathroom or to smoke a cigarette. Liability depends entirely on the judge's courtroom policy.

Beyond these changes to current District law, two other aspects of the revised statute may constitute substantive changes of law.

First, the revised statute applies standardized definitions for the culpable mental states required for criminal liability. Current D.C. Code § 23-585(b) requires that the accused act willfully. Although the term "willfully" is not defined in the statute, the District of Columbia Court of Appeals ("DCCA") has explained that, in a closely related statute,[16] "willful" means "knowing, intentional, and deliberate, rather than inadvertent or accidental," but does not mean "done with a bad purpose," as it might in other statutes.[17] To resolve this ambiguity, the revised statute uses the RCC's general provisions that define "knowingly"[18] and "in fact,"[19] applying the former to the actor's failure to appear as required and the latter to the nature of the citation. In addition, under RCC § 22E-208(d), knowledge may be imputed when a person consciously disregards a substantial risk that that they are required to appear before a judicial officer on a specified date and time, and, to avoid liability, avoids confirming or fails to investigate whether they are required to appear at a specified date and time. These changes clarify and improve the consistency of District statutes.

Second, the revised statute includes a defense where the accused acts with the effective consent[20] of a releasing official, prosecutor, or judicial officer. Current D.C. Code § 23-585(b) is silent as to whether a person may be excused from appearing for a hearing with the consent of a releasing official,[21] prosecutor,[22] or judicial officer.[23] The revised statute makes clear that each of these actors is empowered to excuse the accused from appearing. This change improves the clarity and proportionality of the revised offense.

Other changes to the revised statute are clarificatory in nature and are not intended to substantively change District law.

The revised statute is severed from D.C. Code § 23-585 and given its own section in the revised code. This change clarifies that the defense, penalties, and definitions do not apply to subsection (a) of current D.C. Code § 23-585, which is not being revised at

[16] D.C. Code § 23-1327, also proscribing failure to appear.
[17] *Trice v. United States*, 525 A.2d 176, 181 (D.C. 1987); *see also Patton v. U. S.*, 326 A.2d 818, 820 (D.C. App. 1974).
[18] RCC § 22E-206.
[19] RCC § 22E-207.
[20] "Effective consent" is defined in RCC § 22E-701 to exclude consent obtained by means other than the application of physical force, an express or implied coercive threat, or deception.
[21] Consider, for example, an officer who issues a citation and decides to withdraw it (e.g., to correct an erroneous date or to dismiss the accusation based on newly discovered evidence). The officer retrieves the citation from the accused and tells them that they are excused from appearing on the date specified. The arrestee has the effective consent of a releasing official to not appear.
[22] Consider, for example, a prosecutor who confers with defense counsel before the hearing date and notifies defense counsel that no charges will be filed (i.e. the case will be "no papered") and excuses the accused from appearing in court. The arrestee has the effective consent of a prosecutor to not appear.
[23] Consider, for example, the presiding criminal judge who reschedules all citation arrest hearings to accommodate social distancing during a global health emergency. The arrestee has the effective consent of a judicial officer to not appear.

this time. This change improves the clarity and logical organization of the revised statutes.

RCC § 23-1327. Failure to Appear in Violation of a Court Order.

(a) *First degree*. A person commits first degree failure to appear in violation a court order when that person:
  (1) Knows they are required to appear before a judicial officer on a specified date and time by a court order for what is, in fact, a hearing:
    (A) In a case in which the person is charged with a felony; or
    (B) In which the person is scheduled to be sentenced; and
  (2) Knowingly fails to appear or remain for the hearing.

(b) *Second degree*. A person commits second degree failure to appear in violation a court order when that person:
  (1) Knows they are required to appear before a judicial officer on a specified date and time by a court order for what is, in fact, a hearing:
    (A) In a case in which the person is charged with a felony or misdemeanor; or
    (B) In which the person is scheduled to appear as a material witness in a criminal case; and
  (2) Knowingly fails to appear or remain for the hearing.

(c) *Defense*. A person does not commit an offense under this section when, in fact, a judicial officer gives effective consent to the conduct constituting the offense.

(d) *Penalties*.
  (1) First degree failure to appear in violation of a court order is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) Second degree failure to appear in violation of a court order is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Consecutive sentencing*. The sentence for this offense shall run consecutive to any other sentence.
  (4) *Forfeiture*. Upon conviction under this section, the court may, subject to the provisions of the Federal Rules of Criminal Procedure, order the forfeiture of any security which was given or pledged for the defendant's release.

(e) *Definitions*.
  (1) The term "knows" has the meaning specified in RCC § 22E-206; the term "in fact" has the meaning specified in RCC § 22E-207; and the terms "effective consent," "felony," and "misdemeanor" have the meanings specified in RCC § 22E-701.
  (2) In this section, the term "judicial officer" has the meaning specified in D.C. Code § 23-1331.

(f) *Interpretation of statute.* Chapters 1 through 6 of Subtitle I of Title 22E apply to this offense.

COMMENTARY

Explanatory Note. *This section establishes the failure to appear in violation of a court order offense for the Revised Criminal Code (RCC). The offense prohibits knowingly failing to appear for a hearing after being ordered to appear by a judge. It replaces D.C. Code § 23-1327, Penalties for failure to appear.*

Subsection (a) specifies the elements of first degree failure to appear in violation of a court order. Paragraph (a)(1) requires that the person was required to appear for a hearing before a judicial officer on a specified date and time by a court order that is issued under D.C. Code § 23-584 for a felony. The term "judicial officer" is a defined term under D.C. Code § 23-1331.[1] The term "appear" is not defined and should be construed broadly to include in-person and virtual hearings. The term "court order" includes any judicial directive, oral or written. Common examples include a summons to appear signed by a judge, a pretrial release order that specifies a hearing date and requires the defendant's presence, a scheduling order, and oral directive to return after a recess. A single missed appearance constitutes a single offense, even if the underlying case involved multiple charges.[2] Paragraph (a)(1) also requires that the person knows they are subject to a court order to appear before a judicial officer. The term "knows" is defined in RCC § 22E-206 and here requires that the person is practically certain that they are required to appear at a specific date and time.[3] Under RCC § 22E-208(d), knowledge may be imputed if the person is reckless as to whether a circumstance exists and, with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists. Applied here, knowledge may be imputed when a person consciously disregards a substantial risk that that they are required to appear before a judicial officer on a specified date and time, and to avoid liability avoids confirming or fails to investigate whether they are required to appear at a specified date and time.[4]

Subparagraphs (a)(1)(A) and (a)(1)(B) specify two types of hearings that will trigger first degree liability. Under (a)(1)(A), first degree liability attaches when the person is scheduled to appear as a defendant in a felony case. The term "felony" is defined in RCC § 22E-701. A conviction for the underlying offense is not required.[5] Under (a)(1)(B), first degree liability attaches when the person is scheduled to be sentenced. This does not include hearings in which sentencing is merely a possibility, e.g., a status hearing at which the parties expect to resolve a case short of trial by guilty plea and proceed to sentencing, a trial date on which the parties expect to conclude quickly and proceed to sentencing (if applicable), a probation revocation hearing during which the court may resentence, a status hearing after an appellate court has remanded

[1] D.C Code § 23-1331(1) ("The term 'judicial officer' means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of Title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.").

[2] *Lennon v. United States*, 736 A.2d 208, 210 (D.C. App. 1999).

[3] Consider, for example, a person who is unable to read or understand the citation due to illiteracy or a language barrier. That person may not be practically certain that they were required to appear.

[4] Consider, for example, a person who is handed a scheduling order and angrily tears it up and throws it in the garbage before reading the date. That person may be said to know that they were required to appear on the specified date even though they were not practically certain of it.

[5] *Williams v. U. S.*, 331 A.2d 341, 342 (D.C. App. 1975).

for resentencing. The term "in fact" indicates that the accused is strictly liable with respect to whether the hearing was one of those two types.

Paragraph (a)(2) requires that the person fail to appear[6] at the time specified in the court's order[7] or to remain until excused by a judicial officer.[8] The term "appear" has the same meaning as in paragraph (a)(1). Paragraph (a)(2) specifies that the person must act knowingly, a term defined in RCC § 22E-206, which here means the person must be practically certain that they failed to appear or remain as required.[9] Determining whether a failure to appear is knowing or inadvertent is a fact-sensitive inquiry.[10] Under RCC § 22E-203, the person's conduct must be voluntary.[11]

Subsection (b) specifies the elements of second degree failure to appear in violation of a court order. The elements are identical to the elements of first degree, except for the type of hearing that will trigger liability. Subparagraphs (b)(1)(A) and (b)(1)(B) specify two types of hearings that will trigger second degree liability. Under (b)(1)(A), second degree liability attaches when the person is scheduled to appear as a defendant for either a felony or misdemeanor. Under (b)(1)(B), second degree liability attaches when the person is ordered[12] to appear as a material witness in a criminal case.

Subsection (c) specifies that a person does not commit an offense when they have the effective consent of a judicial officer[13] to miss the hearing or arrive at a later time.

---

[6] *See Macklin v. United States*, 733 A.2d 962, 964 (D.C. App. 1999) (reversing a conviction where there was no evidence presented that the defendant failed to appear).

[7] *See Wilkins v. United States*, 137 A.3d 975, 979 (D.C. App. 2016).

[8] *See Gilliam v. United States*, 46 A.3d 360, 371 (D.C. App. 2012) (affirming a conviction where the defendant was present but subsequently left the courtroom).

[9] Consider, for example, a person who misunderstands when and where they are to appear because the courthouse is closed due to inclement weather or because the hearing is moved to another courtroom. The evidence must show beyond a reasonable doubt that the person was practically certain or deliberately ignorant as to when and where they needed to appear. RCC §§ 22E-206; 22E-208(d). *See, e.g.*, *Smith v. United States*, 583 A.2d 975, 979 (D.C. 1990); *Bolan v. United States*, 587 A.2d 458, 460 (D.C. App. 1991) (reversing a conviction on sufficiency grounds where a defendant was not notified of a courtroom change).

[10] *Evans v. United States*, 133 A.3d 988, 993 (D.C. App. 2016) (explaining, "The evidence of appellant's chronic or recurring memory problems also was evidence that, if credited by the trial judge, might be deemed relevant to the court's assessment of whether appellant's failure to appear was willful. As another example, appellant testified that he 'had so much stuff going on' while his underlying marijuana-possession case was pending, including financial difficulties and housing challenges—circumstances that the trial court, if it credits appellant's testimony, may also deem relevant on the issue of willfulness.").

[11] A person does not commit failure to appear in violation of a court order if the absence was not subject to the person's control. For example, a person does not commit an offense if they are incarcerated, hospitalized, stranded, or unable to connect to a virtual hearing due a technological problem. *See Foster v. United States*, 699 A.2d 1113, 1115 (D.C. App. 1997) (reversing a conviction where the defendant's employer unexpectedly canceled his return trip to the District); *see also Fearwell v. U.S.*, 886 A.2d 95, 101 (D.C. 2005) (holding "[I]f there is evidence—however weak—to support it, a defendant is entitled to a requested instruction that he has presented evidence of special circumstances which prevented him from appearing in court on the scheduled date and time, and that if the jury credits that evidence, this may create a reasonable doubt concerning whether the government has proven willfulness beyond a reasonable doubt."). Likewise a person does not commit an offense if they are detained by a court security officer while being searched, temporarily removed from the courthouse for a fire drill, or made to wait outside a courtroom until a non-public hearing concludes.

[12] A subpoena is insufficient.

[13] Consider, for example, a presiding criminal judge who reschedules all citation arrest hearings to accommodate social distancing during a global health emergency. The arrestee has the effective consent of

"Effective consent" is a defined term and excludes consent that was obtained by the application of physical force, an express or implied coercive threat, or deception.[14] "Consent" is also defined in RCC § 22E-701. The term "in fact" indicates that the accused is strictly liable with respect to whether effective consent was given.[15] It is not a defense that the person mistakenly believed that they were excused when actually they were not excused.[16]

Paragraphs (d)(1) and (d)(2) specify the penalties for each gradation of the revised offense. [*See* Third Draft of Report #41.]

Paragraph (d)(3) specifies that a sentence imposed for an offense under this section must run consecutive to any other sentence. In some cases, the conduct criminalized under this section will also constitute criminal contempt for violation of a court order under RCC § 23-1329(c) or D.C. Code § 11-944 and, in that situation, convictions for both offenses merge under RCC § 22E-214(a)(4).[17]

Paragraph (d)(4) authorizes the court to order the forfeiture of any security which was given or pledged for the defendant's release, subject to the Federal Rules of Criminal Procedure.[18]

Subsection (e) cross-references applicable definitions in the RCC and the D.C. Code.

Subsection (f) specifies that Chapters 1 – 6 the RCC's General Part apply to this Title 23 offense.

Relation to Current District Law. *The revised failure to appear in violation of a court order statute changes current District law in two main ways.*

First, the revised offense provides for two degrees of punishment. Current D.C. Code § 23-1327 effectively has three sentencing gradations: 1-5 years for missing a sentencing hearing or a hearing in a felony case, 90-180 days for missing a hearing in a misdemeanor case, and 0-180 days for failing to appear as a material witness. In contrast, because the RCC imposes only maximum penalties and no mandatory or statutory minimums for this offense,[19] the revised statute condenses the offense to two gradations. This change improves the consistency and proportionality of the revised offenses.

Second, the revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense. The current D.C. Code generally does not codify consistent definitions, rules of liability, rules of

---

a judicial officer to not appear. Consider also a judge who calls a case and is informed that the defendant did not due to a family emergency. If the judge excuses the person's absence and reschedules the hearing, the person does not commit an offense.

[14] RCC § 22E-701.

[15] RCC § 22E-207.

[16] Consider, for example, a person who mistakenly believes they may leave the courtroom temporarily to use the bathroom or to smoke a cigarette. Liability depends entirely on the judge's courtroom policy.

[17] "Multiple convictions for 2 or more offenses arising from the same course of conduct merge when…[o]ne offense reasonably accounts for the other offense, given the harm or wrong, culpability, and penalty proscribed by each."

[18] *See United States v. Nell*, 515 F.2d 1351 (D.C. Cir. 1975).

[19] *See* CCRC Advisory Group Memorandum #32 (March 20, 2020) (available at https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/publication/attachments/Advisory-Group-Memo-32-Supplemental-Materials-to-the-First-Draft-of-Report-52.pdf).

interpretation, or general defenses. In contrast, Subtitle I of Title 22E sets forth broadly applicable rules and definitions relating to the basic requirements of criminal liability, inchoate liability, justification defenses, and penalty enhancements. Application of these general provisions to the revised offense may change District law in numerous ways. For more in-depth discussion of these general provisions, see commentary accompanying statutory provisions in Subtitle I of Title 22E. These changes improve the clarity, consistency, completeness, and proportionality of the revised offense.

Beyond these changes to current District law, six other aspects of the revised statute may constitute substantive changes of law.

First, the revised statute applies standardized definitions for the culpable mental states required for criminal liability. Current D.C. Code § 23-1327 requires that the accused act wilfully. Although the term "wilful" is not defined in the statute, the District of Columbia Court of Appeals ("DCCA") has explained that, in this statute, it means "knowing, intentional, and deliberate, rather than inadvertent or accidental," but does not mean "done with a bad purpose," as it might in other statutes.[20] To resolve this ambiguity, the revised statute uses the RCC's general provisions that define "knowingly"[21] and "in fact,"[22] applying the former to the actor's failure to appear as required and the latter to the nature and issuance of the citation. In addition, under RCC § 22E-208(d), knowledge may be imputed when a person consciously disregards a substantial risk that that they are required to appear before a judicial officer on a specified date and time, and, to avoid liability, avoids confirming or fails to investigate whether they are required to appear at a specified date and time. These changes clarify and improve the consistency of District statutes.

Second, the revised statute omits specific references to provision of notice. Current D.C. Code § 23-1327 discusses notice in three places, all of which appear to provide exceptions or qualifications to the offense's requirement that the person's failure to appear be "willful" (a term the D.C. Code does not define). First, subsection (b) states, "Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is wilful." Second, subsection (b) also specifies that notice of the potential penalties for failure to appear is not required but "shall be a factor" in determining whether such failure to appear is wilful.[23] It further states that, "such warning shall not be a prerequisite to conviction under this section." Third, subsection (c) provides that a factfinder "may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to notify the

[20] *Trice v. United States*, 525 A.2d 176, 181 (D.C. 1987); *see also Patton v. U. S.*, 326 A.2d 818, 820 (D.C. App. 1974).
[21] RCC § 22E-206.
[22] RCC § 22E-207.
[23] This provision appears to be superfluous. Unlike the preceding sentence which establishes a permissive inference by use of the phrase "shall be prima facie evidence," it is unclear what effect, if any, the phrase "shall be a factor" has on the statute. No reference to penalty warnings appears in any of the jury instructions the DCCA has reviewed for error or in the pattern jury instruction for the offense. *Trice v. U.S.*, 525 A.2d 176, 181–82 (D.C. 1987); *Robinson v. U.S.*, 322 A.2d 271 (D.C. 1974); *Raymond v. U.S.*, 396 A.2d 975 (D.C. 1979); *Fearwell v. U.S.*, 886 A.2d 95, 101 (D.C. 2005); *Cooper v. U.S.*, 680 A.2d 1370, 1372 (D.C. 1996); Crim. Jury Inst. for DC 6.602 (2019).

defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice." Resolving these ambiguities about exceptions to the otherwise applicable requirement that conduct be "willful," the revised statute requires only that a person actually be required to appear, know that they are required to appear, and knowingly fail to appear. In the revised statute, the provision of notice may well be relevant to proving a defendant's culpable mental state about their duty to appear or failure to appear. However, more specific references to provision of notice are unnecessary because the RCC's general part defines all applicable mental states[24] and includes a deliberate ignorance provision[25] that clarify the culpable mental that must be proven. This change improves the clarity and consistency of the revised statutes.

Third, the revised offense does not include a special circumstances defense. The D.C. Code is silent as to a special circumstances defense. However, the DCCA has held "if there is evidence—however weak—to support it, a defendant is entitled to a requested instruction that he has presented evidence of special circumstances which prevented him from appearing in court on the scheduled date and time, and that if the jury credits that evidence, this may create a reasonable doubt concerning whether the government has proven willfulness beyond a reasonable doubt."[26] The court provides an example in which a person is so ill that it is physically impossible to appear in court but does not further clarify what types of circumstances may qualify under the DCCA-recognized defense. Resolving this ambiguity, the revised statute incorporates RCC § 22E-203, which provides, as a matter of law that: "No person may be convicted of an offense unless the person voluntarily commits the conduct element required for that offense…When a person's omission provides the basis for liability, a person voluntarily commits the conduct element of an offense when: (A) The person has the physical capacity to perform the required legal duty; or (B) The failure to act is otherwise subject to the person's control." The applicability of RCC § 22E-203 to the revised failure to appear in violation a court order statute effectively renders the special circumstances defense unnecessary, using standardized principles of voluntariness applicable to all revised offenses. This change improves the clarity and consistency of the revised statute.

Fourth, the revised statute includes a defense where the accused acts with the effective consent[27] of a judicial officer. Current D.C. Code § 23-1327 is silent as to whether a person may be excused from appearing for a hearing with the consent of a judicial officer.[28] Resolving this ambiguity, the revised statute makes clear that the court is empowered to excuse the accused from appearing. This change improves the clarity and proportionality of the revised offense.

Fifth, the revised statute is limited to persons who are subject to a court order. Current D.C. Code § 23-1327 does not specify that it applies only to court orders (as

[24] *See* RCC § 22E-206 and accompanying commentary.
[25] RCC § 22E-208(d).
[26] *Fearwell v. United States*, 886 A.2d 95, 101 (D.C. 2005) (internal citations omitted).
[27] "Effective consent" is defined in RCC § 22E-701 to exclude consent obtained by means other than the application of physical force, an express or implied coercive threat, or deception.
[28] Consider, for example, a presiding criminal judge who reschedules all citation arrest hearings to accommodate social distancing during a global health emergency. The arrestee has the effective consent of a judicial officer to not appear.

opposed to releases on citation[29]). However, the statute's location in the District's release and pretrial detention chapter of an enacted title suggests that it may apply only to defendants who have been released under D.C. Code § 23-1321. In addition, District practice is consistent with this reading of the law.[30] To resolve this ambiguity, the revised statute is limited only to persons who are subject to a court order. This change clarifies the revised statute.

Sixth, the revised statute is limited to material witnesses who are required to appear in a criminal case. Current D.C. Code § 23-1327(a) does not specify that it applies only to criminal cases, however, the statute's location in the District's release and pretrial detention chapter of an enacted title suggests that it is specific to criminal matters. To resolve this ambiguity, the revised statute is limited to material witnesses in criminal cases. Criminal contempt remains available under D.C. Code § 11-944. This change clarifies the revised statute.

[29] *See* RCC § 23-585.

[30] *See* Crim. Jury Inst. for DC 6.602 (2019) (including in the first element of the offense that the defendant was "released by a judicial officer").

RCC § 23-1329A. Criminal Contempt for Violation of a Release Condition.

(a) *Offense*. A person commits criminal contempt for violation of a release condition when that person:
  (1) Knows they are subject to a conditional release order that, in fact:
    (A) Is issued under D.C. Code § 23-1321;
    (B) Is in writing;
    (C) Advises the person of the consequences for violating the order, including immediate arrest or the issuance of a warrant for the person's arrest, the criminal penalties under this section, the pretrial release penalty enhancements under RCC § 22E-607, and the criminal penalties for obstruction of justice under D.C. Code § 22-722; and
    (D) Is sufficiently clear and specific to serve as a guide for the person's conduct; and
  (2) Knowingly fails to comply with the conditional release order.

(b) *Defense*. A person does not commit an offense under this section when, in fact, a judicial officer gives effective consent to the conduct constituting the offense.

(c) *Prosecutorial authority*. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

(d) *Expedited non-jury hearing.* A proceeding determining a violation of this section shall be expedited. The proceeding shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.

(e) *Penalties*. Criminal contempt for violation of a release condition is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(f) *Definitions*.
  (1) The term "knows" has the meaning specified in RCC § 22E-206; and the term "in fact" has the meaning specified in RCC § 22E-207; and the term "effective consent" has the meaning specified in RCC § 22E-701.
  (2) In this section, the term "judicial officer" has the meaning specified in D.C. Code § 23-1331.

(g) *Interpretation of statute.* Chapters 1 through 6 of Subtitle I of Title 22E apply to this offense.

COMMENTARY

Explanatory Note. *This section establishes the criminal contempt for violation of a release condition provision*[1] *for the Revised Criminal Code (RCC). The offense prohibits violating a condition of a pretrial release order issued under D.C. Code § 23-*

[1] "[A] criminal contempt proceeding is not a criminal prosecution, and consequently not all procedures required in a criminal trial are necessary in a hearing on a charge of contempt." *Smith v. United States*, 677 A.2d 1022, 1028 (D.C. App. 1996); *In re: Wiggins*, 359 A.2d 579, 580 (D.C.1976).

1321. It replaces subsections (a-1) and (c) of D.C. Code § 23-1329, Penalties for violation of conditions of release.

Paragraph (a)(1) requires that the person knows that they are required to comply with conditions while on release. The term "knows" is defined in RCC § 22E-206 and here requires that the person is practically certain that they must comply with certain conditions.[2] Under RCC § 22E-208(d), knowledge may be imputed if the person is reckless as to whether the circumstance exists and, with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists.[3]

Subparagraphs (a)(1)(A) – (a)(1)(D) require that the person is conditionally released under D.C. Code § 23-1321[4] and that the release order meet the criteria codified in D.C. Code § 23-1322(f).[5] The term "in fact" indicates that the accused is strictly liable[6] with respect to whether the conditional release order is issued under D.C. Code § 23-1321, is in writing, is sufficiently clear and specific to serve as a guide for the person's conduct, and advises the person of the consequences for violating the order. These consequences include immediate arrest or the issuance of a warrant for the person's arrest, criminal penalties under this section, the pretrial release penalty enhancements under RCC § 22E-607, and the criminal penalties for obstruction of justice under D.C. Code § 22-722. Invalidity of the order is not a defense.[7]

Paragraph (a)(2) requires that the person fail to comply with the release order. Paragraph (a)(2) specifies that the person must act knowingly, a term defined in RCC § 22E-206, which here means the person must be practically certain that they failed to

---

[2] Consider, for example, a person who is unable to read or understand the release order due to illiteracy or a language barrier. That person may not be practically certain of their release conditions.

[3] Consider, for example, a person who is handed a release order and angrily tears it up and throws it in the garbage before reading it. That person may be said to know that they were conditionally released, even though they were not practically certain of it.

[4] D.C. Code § 23-1321(b) requires that the court impose a condition "that the person not commit a local, state, or federal crime during the period of release." D.C. Code § 23-1321(c)(1)(B)(xiv) authorizes the court to impose "any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community." Disobedience of these and other court orders are also punished under D.C. Code §§ 11-741 and 11-944. *See Caldwell v. U.S.*, 595 A.2d 961, 965–66 (D.C. 1991). The statute does not apply to a person who is detained. That is, a person cannot be subject to pretrial or presentencing conditions if they are detained in the same case. For example, no statutory or other authority exists under District law for a judicial officer to order a defendant held at D.C. Jail and order that the defendant have no contact with a witness.

[5] *See, e.g., Vaas v. U.S.*, 852 A.2d 44, 46 (D.C. 2004) (defendant's conduct not willful where order failed to meet specificity standard of § 23-1322(f) in case where written order to stay away from "1 block radius" and oral order to stay away from "1 block area" created an ambiguity regarding area from which defendant was barred); *Smith v. U.S.*, 677 A.2d 1022 (D.C. 1996) (no contempt where written statement of conditions was not sufficiently clear and specific to serve as a guide to defendant's conduct where court could not conclude that defendant could reasonably infer from order to stay away from complainant that she was not to have contact with complainant's attorney).

[6] RCC § 22E-207.

[7] A person is not entitled to attack the validity of a court order in a contempt proceeding. *See, e.g., Shewarega v. Yegzaw*, 947 A.2d 47, 51 (D.C. 2008) (respondent not entitled to attack validity of a CPO in contempt proceeding; he was obligated to obey the court order unless and until it was reversed or vacated). "Compliance with court orders is required until they are reversed on appeal or are later modified." *Baker*, 891 A.2d at 212 (quoting *Kammerman v. Kammerman*, 543 A.2d 794, 798–99 (D.C. 1988)). *See also Thomas v. U.S.*, 934 A.2d 389, 391 (D.C. 2007).

comply with one or more provisions in the order. Under RCC § 22E-203, the person's conduct must be voluntary.[8] For example, being arrested on probable cause is not a volitional act, however, committing a crime while on release is.[9] A person must be afforded a reasonable opportunity to comply with the condition.[10]

Subsection (b) specifies that a person does not commit an offense when they have the effective consent of a judicial officer to be excused from the condition of release that is the subject of the charged offense.[11] "Effective consent" is a defined term and excludes consent that was obtained by the application of physical force, an express or implied coercive threat, or deception.[12] "Consent" is also defined in RCC § 22E-701. The term "in fact" indicates that the accused is strictly liable with respect to whether effective consent was given.[13]

Subsection (c) authorizes the court to initiate contempt proceedings *sua sponte*.[14]

Subsection (d) specifies that contempt proceedings must be expedited and tried to the court.[15]

---

[8] A person does not an offense if the act or omission was not subject to the person's control. For example, a person does not violate a condition to meet with their pretrial services officer if they are incarcerated, hospitalized, or stranded. *See, e.g., Evans v. United States*, 133 A.3d 988, 993 (D.C. App. 2016) (explaining, "The evidence of appellant's chronic or recurring memory problems also was evidence that, if credited by the trial judge, might be deemed relevant to the court's assessment of whether appellant's failure to appear was willful. As another example, appellant testified that he 'had so much stuff going on' while his underlying marijuana-possession case was pending, including financial difficulties and housing challenges—circumstances that the trial court, if it credits appellant's testimony, may also deem relevant on the issue of willfulness."); *Foster v. United States*, 699 A.2d 1113, 1115 (D.C. App. 1997) (reversing a conviction under a similar statute where the defendant's employer unexpectedly canceled his return trip to the District); *see also Fearwell v. U.S.*, 886 A.2d 95, 101 (D.C. 2005) (holding "[I]f there is evidence—however weak—to support it, a defendant is entitled to a requested instruction that he has presented evidence of special circumstances which prevented him from appearing in court on the scheduled date and time, and that if the jury credits that evidence, this may create a reasonable doubt concerning whether the government has proven willfulness beyond a reasonable doubt."); *but see Grant v. U.S.*, 734 A.2d 174, 177 (D.C. 1999) (holding that "[a]ddiction to heroin [does] not constitute a defense to the charge of contempt based upon violating a condition of pretrial release not to use drugs.").

[9] *Parker v. U. S.*, 373 A.2d 906, 907 (D.C. App. 1977).

[10] For example, a person does not violate a condition to stay away from a complainant where the complainant is physically chasing after the person and the person makes reasonable efforts to distance themselves. *See* RCC § 22E-203 (requiring physical capacity to perform a required legal duty); *Conley v. United States*, 79 A.3d 270, 292-293 (D.C. 2013) (explaining voluntariness requires a reasonable opportunity to comply with a legal duty); *Lambert v. People of the State of California*, 355 U.S. 225, 229 (1957) (reversing a conviction where, on first becoming aware of her duty, the appellant had no opportunity to comply with the law and avoid its penalty).

[11] Consider, for example, a judge in one case orders a person to complete a domestic violence intervention program and a judge in another case orders the person to complete an inpatient drug rehabilitation program. Consider also a judge who – temporarily or permanently – loosens the requirements of a written order by making an oral pronouncement.

[12] RCC § 22E-701.

[13] RCC § 22E-207.

[14] *See* D.C. Code § 23-1329(c). "[A] criminal contempt proceeding is not a criminal prosecution, and consequently not all procedures required in a criminal trial are necessary in a hearing on a charge of contempt." *Smith v. United States*, 677 A.2d 1022, 1028 (D.C. App. 1996); *In re: Wiggins*, 359 A.2d 579, 580 (D.C.1976).

[15] *See* D.C. Code § 23-1329(c). "[A] criminal contempt proceeding is not a criminal prosecution, and consequently not all procedures required in a criminal trial are necessary in a hearing on a charge of

Subsection (e) specifies the penalties for the revised offense.[16] [*See* Third Draft of Report #41.] In some cases, the conduct criminalized under this section will also constitute criminal contempt under D.C. Code §§ 11-741 or 11-944,[17] failure to appear in violation of a court order under RCC § 23-1327,[18] or tampering with a detection device under RCC § 22E-3402 and convictions for the offenses must merge under RCC § 22E-214(a)(4).[19] Additionally, where the violation of release conditions is committing a new offense,[20] the contempt conviction must merge with or bar any conviction for the new offense.[21]

Subsection (f) cross-references applicable definitions in the RCC.

Subsection (g) specifies that Chapters 1 – 6 the RCC's General Part apply to this Title 23 offense.

Relation to Current District Law. *The revised criminal contempt for violation of a court order statute changes current District law in one main way.*

The revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense. The current D.C. Code generally does not codify consistent definitions, rules of liability, rules of interpretation, or general defenses. In contrast, Subtitle I of Title 22E sets forth broadly applicable rules and definitions relating to the basic requirements of criminal liability, inchoate liability, justification defenses, and penalty enhancements. Application of these general provisions to the revised offense may change District law in numerous ways. For more in-depth discussion of these general provisions, see commentary accompanying statutory provisions in Subtitle I of Title 22E. These changes improve the clarity, consistency, completeness, and proportionality of the revised offense.

Beyond this change to current District law, three other aspects of the revised statute may constitute substantive changes of law.

First, the revised statute applies standardized definitions for the culpable mental states required for criminal liability. Current D.C. Code § 23-1329(c) requires that the accused "intentionally violated a condition of his release." The term "intentionally" is not defined in the statute. There is limited DCCA case law on point that does not clearly distinguish between voluntariness and culpable mental states, but suggests that proof of

---

contempt." *Smith v. United States*, 677 A.2d 1022, 1028 (D.C. App. 1996); *In re: Wiggins*, 359 A.2d 579, 580 (D.C.1976).

[16] This section operates independently of and in addition to statute eliminating limitation on length of sentence for criminal contempt, thus the sentencing limit effectively does not apply. *Caldwell v. U.S.*, 1991, 595 A.2d 961 (D.C. 1991).

[17] *See Caldwell v. U.S.*, 595 A.2d 961, 965–66 (D.C. 1991); *Vest v. United States*, 834 A.2d 908 (D.C. App. 2003).

[18] *See, e.g., Swisher v. U.S.*, 572 A.2d 85, 89 (D.C. 1990).

[19] "Multiple convictions for 2 or more offenses arising from the same course of conduct merge when…[o]ne offense reasonably accounts for the other offense, given the harm or wrong, culpability, and penalty proscribed by each."

[20] D.C. Code § 23-1321(b) requires that the court impose a condition "that the person not commit a local, state, or federal crime during the period of release."

[21] *See Haye v. United States*, 67 A.3d 1025, 1031 (D.C. App. 2013); *United States v. Dixon*, 509 U.S. 688, 698 (1993).

knowledge or awareness of the violation is sufficient, and not a conscious desire to commit the violation.[22] To resolve this ambiguity, the revised statute uses the RCC's general provisions that define "knowingly"[23] and "in fact,"[24] applying the former to the actor's failure to comply with the order and the latter to the nature and issuance of the order. In addition, under RCC § 22E-208(d), knowledge may be imputed when a person consciously disregards a substantial risk that that they are subject to a conditional release order, and, to avoid liability, avoids confirming or fails to investigate whether they are subject to a conditional release order. These changes clarify and improve the consistency of District statutes.

Second, the revised statute includes a defense where the accused acts with the effective consent[25] of a judicial officer. Current D.C. Code § 23-1327 is silent as to whether a person may be excused from appearing for a hearing with the consent of a judicial officer.[26] Resolving this ambiguity, the revised statute makes clear that the court is empowered to excuse the accused from appearing. This change improves the clarity and proportionality of the revised offense.

Third, the revised statute requires that the release order comply with the requirements of D.C. Code § 23-1322(f). Current D.C. Code § 23-1329 is silent as to whether or how a person's conditions of release be specified in an order. District case law has held that evidence of contempt is insufficient where conditions of release are not in writing and sufficiently clear and specific to serve as a guide to defendant's conduct.[27] However, case law has not addressed whether other criteria specified in the detention statute, such as notice of the potential penalties for failure to comply, must also be satisfied. To resolve this ambiguity, the revised statute codifies this point and clarifies that the written order must meet all requirements of D.C. Code § 23-1322(f). This change clarifies and improves the consistency of District statutes.

---

[22] *Grant v. United States*, 734 A.2d 174, 177 n. 6 (D.C. 1999) ("Proof of the intent element of criminal contempt only requires proof that the appellant intended to commit the actions constituting contempt. *See, e.g., Jones v. Harkness*, 709 A.2d 722, 723–24 (D.C.1998) (no defense to contempt that appellant's violations of civil protection order were due to his psychological condition and not motivated by disrespect to court)."); *Jones v. Harkness*, 709 A.2d 722, 723–24 (D.C. 1998) ("Appellant admitted that, knowing the CPO was in place, he contacted Ms. Harkness in violation of the court order on numerous occasions. As the court noted, appellant deliberately engaged in continuing behavior that violated the court order. From appellant's actions, the court properly inferred wrongful intent. *See Swisher, supra*, 572 A.2d at 89 n. 9 (explaining that willfulness could be inferred from the defendant's failure to appear for trial after having been warned that his attendance was required); *see also Hager v. District of Columbia Dep't of Consumer and Regulatory Affairs*, 475 A.2d 367, 368 (D.C.1984) ("Generally, [willful] means 'no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.' ") (quoting *Townsend v. United States*, 68 App. D.C. 223, 229, 95 F.2d 352, 358, cert. denied, 303 U.S. 664, 58 S.Ct. 830, 82 L.Ed. 1121 (1938)).").

[23] RCC § 22E-206.

[24] RCC § 22E-207.

[25] "Effective consent" is defined in RCC § 22E-701 to exclude consent obtained by means other than the application of physical force, an express or implied coercive threat, or deception.

[26] Consider, for example, a judge in one case orders a person to complete a domestic violence intervention program and a judge in another case orders the person to complete an inpatient drug rehabilitation program. Consider also a judge who – temporarily or permanently – loosens the requirements of a written order by making an oral pronouncement.

[27] *Smith v. U.S.*, 677 A.2d 1022 (D.C. 1996); *Vaas v. U.S.*, 852 A.2d 44, 46 (D.C. 2004).

Other changes to the revised statute are clarificatory in nature and are not intended to substantively change District law.

The revised statute is severed from D.C. Code § 23-1329 and given its own section in the revised code. This change clarifies that the defense, penalties, and definitions do not apply to subsections (a), (b), (d), (d-1), (e), and (f) of current D.C. Code § 23-1329, which are not being revised at this time. This change improves the clarity and logical organization of the revised statutes.

RCC § 16-1005A. Criminal Contempt for Violation of a Civil Protection Order.

(a) *Offense*. A person commits criminal contempt for violation of a civil protection order when that person:
  (1) Knows they are subject to a protection order that, in fact:
    (A) Is one of the following:
      (i) A temporary civil protection order issued under D.C. Code § 16-1004;
      (ii) A final civil protection order issued under D.C. Code § 16-1005; or
      (iii) A valid foreign protection order;
    (B) Is in writing;
    (C) Advises the person of the consequences for violating the order, including extension of the order, immediate arrest or the issuance of a warrant for the person's arrest, and the criminal penalties under this section; and
    (D) Is sufficiently clear and specific to serve as a guide for the person's conduct; and
  (2) Knowingly fails to comply with the order.

(b) *Defense*. A person does not commit an offense under this section when, in fact, a judicial officer gives effective consent to the conduct constituting the offense.

(c) *Jurisdiction*. An oral or written statement made by a person located outside the District of Columbia to a person located in the District of Columbia by means of telecommunication, mail, or any other method of communication shall be deemed to be made in the District of Columbia.

(d) *Penalties*. Criminal contempt for violation of a civil protection order is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Definitions*.
  (1) The term "knows" has the meaning specified in RCC § 22E-206; and the term "in fact" has the meaning specified in RCC § 22E-207; and the term "effective consent" has the meaning specified in RCC § 22E-701.
  (2) In this section, the term "judicial officer" has the meaning specified in D.C. Code § 16-1001.
  (3) In this section, the term "valid foreign protection order" has the meaning specified in D.C. Code § 16-1041.

(f) *Interpretation of statute.* Chapters 1 through 6 of Subtitle I of Title 22E apply to this offense.

COMMENTARY

Explanatory Note. *This section establishes the criminal contempt for violation of a civil protection order provision for the Revised Criminal Code (RCC). The offense prohibits violating a temporary or final protection order issued in any jurisdiction. It*

replaces subsections (f), (g),[1] *(g-1), (h), and (i) of D.C. Code § 16-1005, Hearing, evidence, protection order.*

Paragraph (a)(1) requires that the person knows that they are subject to a temporary or final civil protection order issued in the District or a valid foreign protection order.[2] The term "knows" is defined in RCC § 22E-206 and here requires that the person is practically certain that they are subject to a protection order.[3] Under RCC § 22E-208(d), knowledge may be imputed if the person is reckless as to whether the circumstance exists and, with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists.[4]

Subparagraph (a)(1)(A) specifies that there are three types of protection orders that cannot be violated. The phrase "in fact" indicates that the accused is strictly liable[5] with respect to whether the order was a temporary protection order, final protection order, or valid foreign protection order. Invalidity of the order is not a defense.[6] A respondent is not subject to a temporary order until they are properly served with a notice of the hearing and an order to appear, a copy of the petition, and the temporary protection order.[7] The term "valid foreign protection order" is a defined term with the meaning specified in D.C. Code § 16-1041.

Subparagraphs (a)(1)(B) – (a)(1)(D) require that the release order is in writing,[8] advises the person of the consequences for violating the order, and is sufficiently clear and specific to serve as a guide for the person's conduct.[9] Per the rules of interpretation in RCC § 22E-207, a person is strictly liable as to whether the order is compliant with these requirements.

---

[1] The District of Columbia Court of Appeals has held that the elements of the offense are the same whether charged under § 16-1005(f) (violation of CPO as contempt) or § 16-1005(g) (violation of CPO as independent offense). *Ba v. U.S.*, 809 A.2d 1178, 1182 n.6 (D.C. 2002).

[2] These orders include orders entered by consent without admission of guilt. *See* D.C. Code § 16-1005(i).

[3] Consider, for example, a person who is unable to read or understand the protection order due to illiteracy or a language barrier. That person may not be practically certain that they are now subject to a protection order.

[4] Consider, for example, a person who is handed a protection order and angrily tears it up and throws it in the garbage before reading it. That person may be said to know that they were subject to the order, even though they were not practically certain of it.

[5] RCC § 22E-207.

[6] A person is not entitled to attack the validity of a court order in a contempt proceeding. *See, e.g.*, *Shewarega v. Yegzaw*, 947 A.2d 47, 51 (D.C. 2008) (respondent not entitled to attack validity of a CPO in contempt proceeding; he was obligated to obey the court order unless and until it was reversed or vacated). "Compliance with court orders is required until they are reversed on appeal or are later modified." *Baker*, 891 A.2d at 212 (quoting *Kammerman v. Kammerman*, 543 A.2d 794, 798–99 (D.C. 1988)). *See also Thomas v. U.S.*, 934 A.2d 389, 391 (D.C. 2007).

[7] *See* D.C. Code § 16-1004(d), requiring compliance with notice and service rules of the Superior Court of the District of Columbia.

[8] *See* D.C. Code §§ 16-1004 and 1005 requiring that protection orders be made in writing.

[9] *Hector v. U.S.*, 883 A.2d 129, 131 (D.C. 2005) (explaining "A defendant cannot be convicted of criminal contempt where he or she is not put on notice of the specific conditions of the [CPO] order."); *Smith v. U.S.*, 677 A.2d 1022, 1031 (D.C. 1996) (reversing contempt for violating CPO where no evidence that defendant was informed by court that "no contact" order meant no contact through writing as well as no physical contact); *In re Jones*, 898 A.2d 916, 920 (D.C. 2006) (stating, the order must be "specific and definite, or clear and unambiguous.").

Paragraph (a)(2) requires that the person fail to comply[10] with the protection order. Paragraph (a)(2) specifies that the person must act knowingly, a term defined in RCC § 22E-206, which here means the person must be practically certain that they failed to comply with one or more provisions in the order. Under RCC § 22E-203, the person's conduct must be voluntary.[11] A person must be afforded a reasonable opportunity to comply with the condition.[12]

Subsection (b) specifies that a person does not commit an offense when they have the effective consent of a judicial officer to be excused from the provision of the order that is the subject of the charged offense.[13] "Effective consent" is a defined term and excludes consent that was obtained by the application of physical force, an express or implied coercive threat, or deception.[14] "Consent" is also defined in RCC § 22E-701. The term "in fact" indicates that the accused is strictly liable with respect to whether effective consent was given.[15]

Subsection (c) establishes jurisdiction where a person communicates to a person located in the District from a location outside the District.[16]

Subsection (d) specifies the penalty for the revised offense.[17] [*See* Third Draft of Report #41.] In some cases, the conduct criminalized under this section may also

[10] The failure must be to comply with a mandatory condition. For example, if the order permits, but does not require, parental visitation, a person does not violate the order by declining to visit.

[11] A person does not an offense if the act or omission was not subject to the person's control. For example, a person does not violate a condition to attend a domestic violence intervention program if they are incarcerated, hospitalized, or stranded. *See, e.g., Evans v. United States*, 133 A.3d 988, 993 (D.C. App. 2016) (explaining, "The evidence of appellant's chronic or recurring memory problems also was evidence that, if credited by the trial judge, might be deemed relevant to the court's assessment of whether appellant's failure to appear was willful. As another example, appellant testified that he 'had so much stuff going on' while his underlying marijuana-possession case was pending, including financial difficulties and housing challenges—circumstances that the trial court, if it credits appellant's testimony, may also deem relevant on the issue of willfulness."); *Foster v. United States*, 699 A.2d 1113, 1115 (D.C. App. 1997) (reversing a conviction under a similar statute where the defendant's employer unexpectedly canceled his return trip to the District); *see also Fearwell v. U.S.*, 886 A.2d 95, 101 (D.C. 2005) (holding "[I]f there is evidence—however weak—to support it, a defendant is entitled to a requested instruction that he has presented evidence of special circumstances which prevented him from appearing in court on the scheduled date and time, and that if the jury credits that evidence, this may create a reasonable doubt concerning whether the government has proven willfulness beyond a reasonable doubt."); *but see Grant v. U.S.*, 734 A.2d 174, 177 (D.C. 1999) (holding that "[a]ddiction to heroin [does] not constitute a defense to the charge of contempt based upon violating a condition of pretrial release not to use drugs.").

[12] For example, a person does not violate a condition to stay away from a complainant where the complainant is physically chasing after the person and the person makes reasonable efforts to distance themselves. *See* RCC § 22E-203 (requiring physical capacity to perform a required legal duty); *Conley v. United States*, 79 A.3d 270, 292-293 (D.C. 2013) (explaining voluntariness requires a reasonable opportunity to comply with a legal duty); *Lambert v. People of the State of California*, 355 U.S. 225, 229 (1957) (reversing a conviction where, on first becoming aware of her duty, the appellant had no opportunity to comply with the law and avoid its penalty).

[13] Consider, for example, a judge in one case orders a person to complete a domestic violence intervention program and a judge in another case orders the person to complete an inpatient drug rehabilitation program. Consider also a judge who – temporarily or permanently – loosens the requirements of a written order by making an oral pronouncement.

[14] RCC § 22E-701.

[15] RCC § 22E-207.

[16] *See* 16-1005(h).

constitute criminal contempt under D.C. Code §§ 11-741 or 11-944[18] or failure to appear in violation of a court order under RCC § 23-1327[19] and, in that situation, convictions for the offenses must merge under RCC § 22E-214(a)(4).[20]

Subsection (e) cross-references applicable definitions in the RCC.

Subsection (f) specifies that Chapters 1 – 6 the RCC's General Part apply to this Title 16 offense.

Relation to Current District Law. *The revised criminal contempt for violation of a civil protection order statute changes current District law in two main ways.*

First, the revised statute does not criminalize failure to appear for a hearing on a civil protection order as criminal contempt. Current D.C. Code § 16-1005(f) states, "respondent's failure to appear as required by subsection (a) of this section, shall be punishable as [criminal] contempt." In contrast, the revised statute does not distinctly punish such conduct as criminal contempt. Unlike failure to appear as a defendant in a criminal case, which is punished under RCC § 22E-1327, failure to appear in a civil case or quasi-civil case does not frustrate the court's ability to proceed.[21] Accordingly, for violation of a civil protection order a default judgment and civil contempt may be more appropriate sanctions,[22] although criminal contempt also remains available under D.C. Code § 11-944. This change reduces unnecessary overlap and improves the consistency and proportionality of the revised statutes.

Second, the revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense. The current D.C. Code generally does not codify consistent definitions, rules of liability, rules of interpretation, or general defenses. In contrast, Subtitle I of Title 22E sets forth broadly applicable rules and definitions relating to the basic requirements of criminal liability, inchoate liability, justification defenses, and penalty enhancements. Application of these general provisions to the revised offense may change District law in numerous ways. For more in-depth discussion of these general provisions, see commentary accompanying statutory provisions in Subtitle I of Title 22E. These changes improve the clarity, consistency, completeness, and proportionality of the revised offense.

---

[17] This section operates independently of and in addition to statute eliminating limitation on length of sentence for criminal contempt, thus the sentencing limit effectively does not apply. *Caldwell v. U.S.*, 1991, 595 A.2d 961 (D.C. 1991).

[18] *See Caldwell v. U.S.*, 595 A.2d 961, 965–66 (D.C. 1991); *Vest v. United States*, 834 A.2d 908 (D.C. App. 2003).

[19] *See, e.g., Swisher v. U.S.*, 572 A.2d 85, 89 (D.C. 1990).

[20] "Multiple convictions for 2 or more offenses arising from the same course of conduct merge when…[o]ne offense reasonably accounts for the other offense, given the harm or wrong, culpability, and penalty proscribed by each."

[21] Due process and procedural rules may require a defendant's presence in a criminal case. *See, e.g.*, FRCrP 43. However, in a civil case, the court can proceed in the defendant or respondent's absence and grant the plaintiff or petitioner relief by default. D.C. Code § 16-1004(3) authorizes the entry of a final civil protection order by default, if a respondent fails to appear. This is a particularly robust sanction because, unlike a default or default judgment in a purely civil case, a civil protection order appears in a criminal records search, triggering a multitude of collateral consequences for the respondent.

[22] *See, e.g.*, D.C. Code § 16-2325.01(c) (authorizing civil contempt instead of criminal contempt for failure to appear as a participant in a delinquency or neglect proceeding).

Beyond these two changes to current District law, three other aspects of the revised statute may constitute substantive changes of law.

First, the revised statute applies standardized definitions for the culpable mental states required for criminal liability. Current D.C. Code §§ 16-1005(f) and (g) do not specify a culpable mental state requirement. District case law has held that a person must act "willfully, i.e., that he had a 'wrongful state of mind.'"[23] However, case law does not provide a clear definition of "willfully." Resolving this ambiguity, the revised statute uses the RCC's general provisions that define "knowingly"[24] and "in fact,"[25] applying the former to the actor's failure to comply with the order and the latter to the nature and issuance of the order. In addition, under RCC § 22E-208(d), knowledge may be imputed when a person consciously disregards a substantial risk that that they are subject to a protection order, and, to avoid liability, avoids confirming or fails to investigate whether they are subject to a protection order. These changes clarify and improve the consistency of District statutes.

Second, the revised statute includes a defense where the accused acts with the effective consent[26] of a judicial officer. Current D.C. Code § 16-1005(f) – (i) are silent as to whether a person may be excused from complying with an order with the consent of a judicial officer.[27] Resolving this ambiguity, the revised statute makes clear that the court is empowered to excuse the accused from complying. This change improves the clarity and proportionality of the revised offense.

Third, the revised statute requires that the release order be in writing,[28] advise the person of the consequences for violating the order, and be clear and specific. Current D.C. Code § 16-1005 is silent as to whether or how a person's conditions of release be specified in an order. District case law has held that evidence of contempt is insufficient where the civil protection order is not sufficiently clear and specific to serve as a guide to defendant's conduct.[29] However, case law has not addressed whether other criteria, such as notice of the potential penalties for failure to comply, must also be satisfied. To resolve this ambiguity, the revised statute codifies this point and requires notice similar to

---

[23] *See Davis v. U.S.*, 834 A.2d 861, 867 (D.C. 2003) (reversing a conviction where a defendant was removed from a required 22-week program "willfully.")

[24] RCC § 22E-206.

[25] RCC § 22E-207.

[26] "Effective consent" is defined in RCC § 22E-701 to exclude consent obtained by means other than the application of physical force, an express or implied coercive threat, or deception.

[27] Consider, for example, a judge who in one case orders a person to complete a domestic violence intervention program and a judge in another case who orders the person to complete an inpatient drug rehabilitation program. Consider also a judge who – temporarily or permanently – loosens the requirements of a written order by making an oral pronouncement.

[28] *See* D.C. Code §§ 16-1004 and 1005 requiring that protection orders be made in writing.

[29] *Hector v. U.S.*, 883 A.2d 129, 131 (D.C. 2005) (explaining "A defendant cannot be convicted of criminal contempt where he or she is not put on notice of the specific conditions of the [CPO] order."); *Smith v. U.S.*, 677 A.2d 1022, 1031 (D.C. 1996) (reversing contempt for violating CPO where no evidence that defendant was informed by court that "no contact" order meant no contact through writing as well as no physical contact); *In re Jones*, 898 A.2d 916, 920 (D.C. 2006) (stating, the order must be "specific and definite, or clear and unambiguous.").

what is required for criminal contempt for violation of a release condition under RCC § 22E-1329A. This change clarifies and improves the consistency of District statutes.

Other changes to the revised statute are clarificatory in nature and are not intended to substantively change District law.

First, the revised statute does not specify that children must be prosecuted as children. Current D.C. Code § 16-1005(g-1) states, "Enforcement proceedings under subsections (f) and (g) of this section in which the respondent is a child as defined by § 16-2301(3) shall be governed by subchapter I of Chapter 23 of this title." This language appears to be superfluous and potentially confusing, as no other criminal offense definition includes a similar cross-reference. This change clarifies the revised statute.

Second, the revised statute is severed from D.C. Code § 16-1005 and given its own section in the revised code. This change clarifies that the defense, penalties, and definitions do not apply to subsections (a) – (e) of current D.C. Code § 16-1005, which are not being revised at this time. This change improves the clarity and logical organization of the revised statutes.

RCC § 24-241.05A. Violation of Work Release.

(a) *Offense*. A person commits violation of work release when that person:
  (1) In fact, is granted a work release privilege under D.C. Code § 24-241.02; and
  (2) Knowingly fails to return at the time and to the place of confinement designated in their work release plan.

(b) *Defense*. A person does not commit an offense under this section when, in fact, a judicial officer, the Director of the Department of Corrections, or the Chairman of the United States Parole Commission gives effective consent to the conduct constituting the offense.

(c) *Prosecutorial Authority*. The Attorney General for the District of Columbia shall prosecute violations of this section.

(d) *Penalties*.
  (1) Violation of work release is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *Consecutive sentencing*. The sentence for this offense shall run consecutive to any other sentence.

(e) *Definitions*.
  (1) The term "knowingly" has the meaning specified in RCC § 22E-206; the term "in fact" has the meaning specified in RCC § 22E-207; and the term "effective consent" has the meaning specified in RCC § 22E-701.
  (2) In this section, the term "judicial officer" has the meaning specified in D.C. Code § 23-1331.

(f) *Interpretation of statute.* Chapters 1 through 6 of Subtitle I of Title 22E apply to this offense.

COMMENTARY

Explanatory Note. *This section establishes the violation of work release offense for the Revised Criminal Code (RCC). The offense prohibits knowingly violating a work release privilege. It replaces subsection (b) of D.C. Code § 24-241.05, violations of a work release plan.*

Paragraph (a)(1) requires that the person is subject to a work release privilege. The term "in fact" indicates that the accused is strictly liable with respect to whether they were on work release at the time the elements of the offense were completed.[1]

Paragraph (a)(2) requires that the person fail to return to the place of confinement designated in their work release plan. Paragraph (a)(2) specifies that the person must act knowingly, a term defined in RCC § 22E-206. Applied here, it means the person must be practically certain that they failed to return as required.[2] Under RCC § 22E-208(d),

[1] RCC § 22E-207.

[2] Consider, for example, a person who is unable to read or understand their work release plan due to illiteracy or a language barrier. That person may not be practically certain that they failed to return as required.

knowledge may be imputed if the person is reckless as to whether a circumstance exists and, with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists. Applied here, knowledge may be imputed when a person consciously disregards a substantial risk that that they have been granted a work release privilege, and to avoid liability avoids confirming or fails to investigate whether they have been granted a work release privilege.[3] Under RCC § 22E-203, the person's conduct must be voluntary.[4]

Subsection (b) specifies that a person does not commit an offense when they have the effective consent of a judicial officer,[5] the Director of the Department of Corrections, or the Chairman of the United States Parole Commission,[6] to be absent from their designated place of confinement. "Effective consent" is a defined term and excludes consent that was obtained by the application of physical force, an express or implied coercive threat, or deception.[7] "Consent" is also defined in RCC § 22E-701. The term "in fact" indicates that the accused is strictly liable with respect to whether effective consent was given.[8] It is not a defense that the person mistakenly believed that they were excused when actually they were not excused.

Subsection (c) states that the Attorney General for the District of Columbia is responsible for prosecuting violations of the statute.

Subsection (d) specifies the penalties for the revised offense. [*See* Third Draft of Report #41.]

Paragraph (d)(2) specifies that a sentence imposed for an offense under this section must run consecutive to any other sentence. In some cases, the conduct criminalized under this section will also constitute third degree escape under RCC § 22E-3401(c) and convictions for both offenses must merge under RCC § 22E-214(a)(4).[9]

Subsection (e) cross-references applicable definitions in the RCC and the D.C. Code.

Subsection (f) specifies that Chapters 1 – 6 the RCC's General Part apply to this Title 24 offense.

Relation to Current District Law. *The revised violation of work release statute changes current District law in one main way.*

The revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense. The current D.C. Code

[3] Consider, for example, a person who is handed a work release plan and angrily tears it up and throws it in the garbage before reading the designated place of confinement. That person may be said to know that they failed to return even though they were not practically certain that they did.

[4] A person does not commit violation of work release if the absence was not subject to the person's control. For example, a person does not commit an offense if they are incarcerated, hospitalized, or stranded.

[5] Paragraph (e)(2) specifies that the term "judicial officer" has the meaning specified in D.C. Code § 23-1331.

[6] The D.C. Board of Parole, referenced in D.C. Code § 24-241.02 no longer exists and its responsibilities are now handled by the United States Parole Commission. D.C. Code § 24-404.

[7] RCC § 22E-701.

[8] RCC § 22E-207.

[9] "Multiple convictions for 2 or more offenses arising from the same course of conduct merge when…[o]ne offense reasonably accounts for the other offense, given the harm or wrong, culpability, and penalty proscribed by each."

generally does not codify consistent definitions, rules of liability, rules of interpretation, or general defenses. In contrast, Subtitle I of Title 22E sets forth broadly applicable rules and definitions relating to the basic requirements of criminal liability, inchoate liability, justification defenses, and penalty enhancements. Application of these general provisions to the revised offense may change District law in numerous ways. For more in-depth discussion of these general provisions, see commentary accompanying statutory provisions in Subtitle I of Title 22E. These changes improve the clarity, consistency, completeness, and proportionality of the revised offense.

Beyond this change to current District law, two other aspects of the revised statute may constitute substantive changes of law.

First, the revised statute applies standardized definitions for the culpable mental states required for criminal liability. The current violation of a work release plan statute[10] punishes "Any prisoner who willfully fails to return at the time and to the place of confinement designated in his work release plan." However, the term "willfully" is not defined and it is unclear to what extent that mental state applies to the language that follows. There is no DCCA case law on point. The revised statute uses the RCC's general provisions that define "knowingly"[11] and "in fact"[12] and specifies that culpable mental states apply until the occurrence of a new culpable mental state or strict liability in the offense.[13] . In addition, under RCC § 22E-208(d), knowledge may be imputed when a person consciously disregards a substantial risk that that they have been granted a work release privilege, and, to avoid liability, avoids confirming or fails to investigate whether they have been granted a work release privilege. These changes clarify and improve the consistency of District statutes.

Second, the revised statute includes a defense where the accused acts with the effective consent[14] of a judicial officer, the Director of the Department of Corrections, or the Chairman of the United States Parole Commission. Current D.C. Code § 24-241.05(b) is silent as to whether a person may be excused from returning to the place designated on their work release plan with the consent of a judicial officer,[15] the Department of Corrections,[16] or the United States Parole Commission.[17] Resolving this ambiguity, revised statute makes clear that each of these actors is empowered to excuse the accused from returning. This change improves the revised offenses by describing all

[10] D.C. Code § 24-241.05.
[11] RCC § 22E-206.
[12] RCC § 22E-207.
[13] RCC § 22E-207(a).
[14] "Effective consent" is defined in RCC § 22E-701 to exclude consent obtained by means other than the application of physical force, an express or implied coercive threat, or deception.
[15] Consider, for example, a judge who orders a person to remain in court for a hearing instead of returning to their residence at the time specified on their work plan. That person does not commit an offense by abiding by the court's order.
[16] Consider, for example, a halfway house which directs a person to return at 8:00 p.m. and not 7:00 p.m. as specified in the work release plan, to avoid conflict with another resident. That person does not commit an offense by adhering to the safety rules of the confining institution.
[17] Consider, for example, a parole officer who directs a supervisee by text message to report to another placement for the night, due to overcrowding or an emergency evacuation. That person does not commit an offense by following their parole officer's amended work release plan.

elements that must be proven and applying consistent definitions throughout the revised code.

Other changes to the revised statute are clarificatory in nature and are not intended to substantively change District law.

The revised statute is severed from D.C. Code § 24-241.05 and given its own section in the revised code. This change clarifies that the defense, penalties, and definitions do not apply to subsection (a) of current D.C. Code § 24-241.05, which is not being revised at this time. This change improves the clarity and logical organization of the revised statutes.