



# First Draft of Report #59 – Endangerment with a Firearm

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.ccrdc.dc.gov](http://www.ccrdc.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.ccrdc.dc.gov](http://www.ccrdc.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 #59 – Endangerment with a Firearm 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.

**RCC § 22E-4120. Endangerment with a Firearm.**

- (a) *Offense.* A person commits endangerment with a firearm when that person:
- (1) Knowingly discharges a projectile from a firearm outside a licensed firing range; and
  - (2) Either:
    - (A) The discharged projectile creates a substantial risk of death or bodily injury to another person; or
    - (B) In fact:
      - (i) The person or the discharged projectile is in a location that is:
        - (I) Open to the general public at the time of the offense;
        - (II) A communal area of multi-unit housing;
        - (III) A public conveyance; or
        - (IV) A rail transit station; and
      - (ii) The person does not have permission to discharge a projectile from a firearm under:
        - (I) A written permit issued by the Metropolitan Police Department; or
        - (II) Other District or federal law.
- (b) *Penalties.* Endangerment with a firearm is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *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 terms “bodily injury,” “firearm,” “open to the general public,” and “public conveyance” have the meanings specified in RCC § 22E-701.
  - (2) In this section, the term “rail transit station” has the meaning specified in D.C. Code § 35-251.

**COMMENTARY**

***Explanatory Note.*** This section establishes the endangerment with a firearm offense for the Revised Criminal Code (RCC). The offense prohibits knowingly discharging a projectile from a firearm without special permission to do so. The offense does not exist under current District law but is similar to conduct already punished in D.C. Code §§ 22-4503.01 (Unlawful discharge of a firearm)<sup>1</sup> and 22-1321 (Disorderly Conduct),<sup>2</sup> as well as the conduct constituting penalty enhancements for “drive-by” or “random” shootings in D.C. Code §§ 22-2104.01(b)(5) and 24-403.01 (b-1)(2)(E).

---

<sup>1</sup> RCC § 22E-4106, Negligent Discharge of a Firearm.

<sup>2</sup> RCC § 22E-4201.

Paragraph (a)(1) specifies that the person must discharge a projectile from a firearm outside of a licensed firing range.<sup>3</sup> Per its ordinary meaning,<sup>4</sup> a “discharge” does not require aiming a weapon. “Firearm” is a defined term that refers to a weapon “which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive” and excludes antiques.<sup>5</sup> Paragraph (a)(1) specifies that to be criminally liable for discharging a firearm, a person must act at least knowingly. The term “knowingly” is defined in RCC § 22E-206 and here means that the person must be practically certain that they discharge a projectile from a firearm and that the discharge occurs in a location other than a licensed firing range.

Paragraph (a)(2) enumerates two circumstances in which knowingly discharging a projectile from a firearm is prohibited under this section.<sup>6</sup>

Subparagraph (a)(2)(A) punishes shooting (in any location, private or public) in a manner that creates a substantial risk of death or bodily injury to another person.<sup>7</sup> Per the rules of interpretation in RCC § 22E-207, a person must know—that is be practically certain—that they are endangering someone else.

Subparagraph (a)(2)(B) punishes shooting in a referenced public place (irrespective of whether any person or property is endangered) without lawful authority to do so.<sup>8</sup> Subparagraph (a)(2)(B) uses the term “in fact” to specify that a person is strictly liable as to being in a prohibited location and as to lacking lawful authority.<sup>9</sup>

Sub-subparagraph (a)(2)(B)(i) specifies that the prohibited locations are: places that are open to the general public at the time of the offense, a communal area of multi-unit housing, a public conveyance, and a rail transit station. The terms “open to the general public,”<sup>10</sup> and “public conveyance”<sup>11</sup> are defined in RCC § 22E-701 and “rail transit station” has the meaning specified in D.C. Code § 35-251. Either the person or the

---

<sup>3</sup> The District of Columbia does not currently have any firing ranges or hunting grounds.

<sup>4</sup> See, e.g., Merriam-Webster Online Dictionary at <https://www.merriam-webster.com/dictionary/discharge> (“to relieve of a charge, load, or burden”).

<sup>5</sup> RCC § 22E-701. Unless there is evidence that the firearm is antique, the government is not required to prove beyond a reasonable doubt that the firearms are not antique as an element of the offense in its case-in-chief. *Toler v. United States*, 198 A.3d 767 (D.C. 2018).

<sup>6</sup> See also RCC § 22E-4106, Negligent Discharge of a Firearm.

<sup>7</sup> Consider, for example, a person who is shooting targets in their backyard, in a manner that creates a substantial risk that a neighbor in an adjacent yard will be struck by a bullet.

<sup>8</sup> Consider, for example, a person who is shooting in the air outside of an embassy to make a political statement. See, e.g., Peter Hermann and Spencer S. Hsu, *Man ordered detained after police say he fired 32 rounds at Cuban Embassy*, WASHINGTON POST (May 4, 2020). Consider also a person who is hunting animals.

<sup>9</sup> RCC § 22E-207.

<sup>10</sup> “Open to the general public” is defined to mean no payment, membership, affiliation, appointment, or special permission is required to enter.

<sup>11</sup> “Public conveyance” means any government-operated air, land, or water vehicle used for the transportation of persons, including any airplane, train, bus, or boat.

discharged ammunition may be in a public place.<sup>12</sup> This includes any part of the bullet’s flight path.<sup>13</sup>

Sub-subparagraph (a)(2)(B)(ii) provides that a person may discharge a projectile from a firearm if the Metropolitan Police Department (“MPD”) grants written permission to do so. MPD may permit the discharge of a firearm by a particular person, in a particular location, or at a specified time. Sub-subparagraph (a)(2)(B)(ii) also provides that a person may discharge a projectile from a firearm if they have any other permission to do so under District or federal law.

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

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

***Relation to Current District Law.** The revised endangerment with a firearm statute is a new offense and, in that sense, all aspects of the revised statute are substantive changes to District law. Compared to current District crimes, the revised endangerment with a firearm statute changes current District law in two main ways.*

First, the revised statute accounts for the distinctly terrifying nature of public shootings that are not otherwise part of a crime against property or persons. The current D.C. Code provides significant liability for possessing or carrying a weapon illegally, irresponsibly, or during a crime but very little additional liability for firing a gun. Except for murders,<sup>14</sup> under the current D.C. Code there is just one way to prosecute a shooting that does not amount to an assault or cause property damage and goes beyond a possession or carrying charge.<sup>15</sup> Namely, the D.C. Code punishes “unlawful discharge of a firearm” as a misdemeanor offense.<sup>16</sup> However, this statute is regulatory in nature and punishes negligently mishandling a firearm. Consequently, the current D.C. Code has no crime that distinctly addresses intentional discharge of a firearm where only emotional harm to individuals or the community results. In contrast, the RCC punishes knowingly discharging a firearm as a distinct crime, even where there is no intent to harm a person or property. This change eliminates a gap in liability and improves the logical organization of the revised statutes.

Second, the RCC logically reorganizes gun offenses, drawing meaningful grading and penalty distinctions based on how a firearm is possessed, carried, or used. Under the current D.C. Code, severe penalties are available for possession or carrying a firearm,

---

<sup>12</sup> For example, a person commits an offense by shooting out of a private moving motor vehicle into a public way. A person also commits an offense by shooting from a public sidewalk into a private building.

<sup>13</sup> For example, a person commits an offense by shooting from one private building across an alleyway into another private building.

<sup>14</sup> This statute deters gun owners from maintaining a weapon irresponsibly, in a manner that could prove dangerous at some later time. See also RCC §§ 7-2507.02 (Unlawful Storage of a Firearm); 7-2509.06 (Carrying a Pistol in an Unlawful Manner); D.C. Code 7-2509.06 (Carrying a pistol while impaired).

<sup>15</sup> Consider, for example, a drug turf war in which one seller drives through the contested block, shooting in the air, to send a message that no other seller may do business there. Consider also a person who is shooting in the air outside of an embassy to make a political statement. See, e.g., Peter Hermann and Spencer S. Hsu, *Man ordered detained after police say he fired 32 rounds at Cuban Embassy*, WASHINGTON POST (May 4, 2020).

<sup>16</sup> D.C. Code § 22-4503.01; RCC § 22E-4106.

without differentiation as to whether that firearm was used or displayed in any manner. A person who is charged with a crime of unlawfully possessing a firearm (actually or constructively) under the current D.C. Code may be subject to longer incarceration than a person who is charged with a crime of unlawfully carrying, brandishing, shooting, assaulting another with, or injuring another with a firearm.<sup>17</sup> In contrast, the RCC generally organizes and penalizes firearm crimes progressively more seriously, from mere possessory crimes, to carrying offenses that may endanger others, to actual use or display of a firearm during a crime that harms persons or property. This graduated approach is consistent with the CCRC’s public opinion research,<sup>18</sup> which indicates that mere possession of a firearm during an offense is less relevant to the seriousness of the offense than use or display of the firearm and the resulting harm to complainants. This change improves the logical organization and proportionality of the revised statutes.

*National Legal Trends. The revised endangerment with a firearm statute has limited support in reform jurisdictions.<sup>19</sup> Multiple jurisdictions separately criminalize discharging a firearm in a manner that endangers or frightens others nearby.<sup>20</sup>*

---

<sup>17</sup> Compare D.C. Code § 7-2502.01 (1 year or 5 years for possession of an unregistered firearm) with D.C. Code § 22-4503.01 (1 year for unlawful discharge). Compare D.C. Code § 22-4503(b)(1) (10 years or 15 years for unlawful possession) with D.C. Code §§ 22-4504(a)(2) (10 years for carrying), 22-402 (10 years for assault with a dangerous weapon), and 22-404.01 (10 years for assault causing serious bodily injury).

<sup>18</sup> Respondents agreed that causing even a minor injury by using a firearm should be punished more severely than causing a more serious injury without one. See Advisory Group Memo #27 Appendix A - Survey Responses at 23 (showing the presence of a gun significantly increased the perceived severity, but whether the gun is used or displayed is critical in impressions of severity). For instance, shooting someone with a gun and causing an injury requiring immediate medical treatment was perceived as being two severity levels higher (8.2) than the Level 6 milestone offense of causing the same type of injury without a gun. Similarly, threatening to kill someone face-to-face while displaying a gun was ranked as nearly two severity levels higher (7.6) than making the same threat while unarmed (5.6). In contrast, secretly carrying, but not displaying or shooting a gun, in the process of an attempted robbery was ranked as only somewhat more serious than gun-free attempted robbery (5.0 versus 4.3).

<sup>19</sup> Twenty-nine states (“reform jurisdictions”) have comprehensively modernized their criminal laws based in part on the Model Penal Code. The 29 states are: Alabama; Alaska; Arizona; Arkansas; Colorado; Connecticut; Delaware; Hawaii; Illinois; Indiana; Kansas; Kentucky; Maine; Minnesota; Missouri; Montana; New Hampshire; New Jersey; New York; North Dakota; Ohio; Oregon; Pennsylvania; South Dakota; Tennessee; Texas; Utah; Washington; Wisconsin. See Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 NEW CRIM. L. REV. 319, 326 (2007) (listing 34 jurisdictions, six of which—Florida, Georgia, Iowa, Nebraska, New Mexico, and Wyoming—do not have general parts analogous to the Model Penal Code General Part).

<sup>20</sup> See, e.g., Ala. Code § 13A-11-61 (punishing shooting into a building or vehicle); Ark. Code Ann. § 5-74-107 (requiring “a substantial risk of physical injury to another person or property damage”); Colo. Rev. Stat. Ann. § 18-12-107.5 (punishing shooting into a building or vehicle); 720 Ill. Comp. Stat. Ann. 5/24-1.5 (punishing shooting that “endangers the bodily safety of an individual”); Kan. Stat. Ann. § 21-6308 (grading based on whether the location is occupied); Minn. Stat. Ann. § 609.66 (includes recklessly handling a gun in a way that endangers others); N.Y. Penal Law § 265.35; Wash. Rev. Code Ann. §§ 9A.1.230(b) and 9A.36.045; Wis. Stat. Ann. § 941.20. See also Kirstin Garriss, *Shelby County Lawmakers Propose Community Terrorism Bill to Battle Drive-By Shootings*, FOX13 (Feb. 4, 2020) (discussing proposed “community terrorism legislation” that would increase penalties for those who shoot from a car, into a car, into a building or into a crowd of people).