



First Draft of Report #21 Recommendations for Kidnapping and Related Offenses

SUBMITTED FOR ADVISORY GROUP REVIEW
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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.

This Draft Report has two parts: (1) draft statutory text for a new Title 22A 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 No. 21, *Kidnapping and Related Offenses*, is July 13, 2018 (eight weeks from the date of issue). Oral comments and written comments received after July 13, 2018 will not be reflected in the Second Draft of Report No. 21. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

Chapter 14. Kidnapping and Related Offenses.

RCC § 22A-1401 Aggravated Kidnapping

RCC § 22A-1402 Kidnapping

RCC § 22A-1403 Aggravated Criminal Restraint

RCC § 22A-1404 Criminal Restraint

RCC § 22A-1401. Aggravated Kidnapping

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

Commentary

Explanatory Note. This subsection establishes the aggravated kidnapping offense for the Revised Criminal Code (RCC). This offense criminalizes committing kidnapping if the complainant was a protected person, if the kidnapping was committed for the purpose of harming a protected person, or if the defendant committed kidnapping by means of a dangerous weapon. Along with the revised kidnapping,¹ aggravated criminal restraint,² and criminal restraint³ offenses, the revised aggravated kidnapping offense replaces the kidnapping offense in the current D.C. Code. Insofar as they are applicable to the current kidnapping offense, the

¹ RCC §22A-1402.

² RCC §22A-1403.

³ RCC §22A-1404.

aggravated kidnapping offense replaces the protection of District public officials statute⁴ and five victim-specific penalty enhancements: the enhancement for senior citizens;⁵ the enhancement for citizen patrols;⁶ the enhancement for minors;⁷ the enhancement for taxicab drivers;⁸ and the enhancement for transit operators and Metrorail station managers⁹ in the current D.C. Code. Insofar as it is applicable to the current kidnapping offense, the aggravated kidnapping offense also replaces the current while-armed penalty enhancement.¹⁰

Subsection (a)(1) states that aggravated kidnapping requires that the defendant satisfy all the elements of kidnapped as defined under RCC § 22A-1402.¹¹ With respect to the commission of a kidnapping, the aggravated kidnapping offense does not require any additional culpable mental states that go beyond those specified in RCC § 22A-1402.

Subsection (a)(2)(A) specifies that a person commits aggravated kidnapping if he or she commits kidnapping and was reckless as to the fact that the complainant is a “protected person,” a term defined under RCC § 22A-1001, which includes “a law enforcement officer, while in the course of official duties”, “public safety employee, while in the course of official duties,” “transportation worker, while in the course of official duties,” “District official or employee, while in the course of official duties,” or a “citizen patrol member, while in the course of a citizen patrol.” Under subsection (a)(2)(A), the defendant must have been reckless as to the complainant being a protected person, a culpable mental state defined in RCC § 22A-206, meaning the accused must disregard a substantial and unjustifiable risk that the complainant is a “protected person.”

Subsection (a)(2)(B) specifies that a person commits aggravated kidnapping if he or she commits kidnapping for the purpose of harming the complainant because of the complainant’s status as a law enforcement officer; public safety employee; participant in a citizen patrol; District official or employee; or a family member of a District official or employee. This aggravating circumstance requires that the accused acted with “purpose” a term defined at RCC § 22A-206, which means that accused must consciously desire to harm that person because of his or her status as a law enforcement officer, public safety employee, participant in a citizen patrol, district official or employee, or family member of a District official or employee.¹² “Law enforcement officer,” “public safety employee,” “citizen patrol,” “District official or employee,” and “family member” are all defined terms in RCC § 22A-1001.

Subsection (a)(2)(C) specifies that a person commits aggravated kidnapping if he or she commits kidnapping by knowingly displaying or touching another person with a dangerous weapon or imitation weapon. The phrase “by displaying or touching another person with a dangerous weapon or imitation dangerous weapon” should be broadly construed to include

⁴ D.C. Code § 22-851.

⁵ D.C. Code § 22-3601.

⁶ D.C. Code § 22-3602.

⁷ D.C. Code § 22-3611.

⁸ D.C. Code §§ 22-3751; 22-3752.

⁹ D.C. Code §§ 22-3751.01; 22-3752.

¹⁰ D.C. Code § 22-4502.

¹¹ For discussion of the elements of kidnapping, see commentary to RCC § 22A-1402, below.

¹² For example, a defendant who kidnaps an off-duty police officer in retaliation for the officer arresting the defendant’s friend would constitute committing murder with the purpose of harming the decedent due to his status as a law enforcement officer.

kidnappings that only minimally involve displaying or touching another person with a weapon.¹³ This subsection also requires proof that the weapon is a “dangerous weapon” or “imitation weapon,” terms defined in RCC § 22-1001.7. Subsection (a)(2)(C) specifies that a “knowing” culpable mental state applies to this element, which requires that the defendant was practically certain, or consciously desired, that he or she would display or touch another person with a dangerous weapon or imitation weapon.

Relation to Current District Law. *The RCC aggravated kidnapping statute changes current District law in five main ways to reduce overlap with other offenses and improve the proportionality of penalties.*

First, the RCC aggravated kidnapping statute incorporates all changes to current law included in the non-aggravated RCC kidnapping statute.¹⁴ A person commits aggravated kidnapping if he or she commits kidnapping as defined under RCC § 22A-1402, plus proof of one of the additional elements listed under subsection (a)(2).

Second, the RCC aggravated kidnapping statute incorporates multiple penalty enhancements based on the status of the complainant into a new criminal restraint gradation, capping the effect of these enhancements. The D.C. Code currently provides multiple penalty enhancements for the commission of a kidnapping offense,¹⁵ without specifying whether or how these enhancements may be combined or “stacked” when multiple enhancements are applicable to a single charge. DCCA case law has not addressed whether most combinations of these penalty enhancements can be combined, but the combination of at least some of these enhancements has been upheld.¹⁶ By contrast, under the aggravated kidnapping offense, the penalty for kidnapping cannot be enhanced two or more times based on any of the listed aggravating factors.¹⁷ While multiple aggravating factors may be charged, proof of just one is sufficient for an aggravated kidnapping conviction and proof of others does not change the maximum statutory penalty for the crime.¹⁸ Capping the effect of penalty enhancements improves the proportionality of the District law by preventing aggravated forms of the offense from being penalized the same as much more serious offenses.¹⁹

¹³ For example, assuming the other elements of the offense are proven, rearranging one’s coat to provide a momentary glimpse of part of a knife, or holding a sharp object to someone’s back may be sufficient for liability under subsection (a)(3).

¹⁴ See Commentary to RCC § 22A-1402.

¹⁵ See, e.g., D.C. Code § 22-3602 (providing an enhanced penalty for kidnapping committed against “a member of a citizen patrol (“member”) while that member is participating in a citizen patrol, or because of the member’s participation in a citizen patrol”); D.C. Code § 22-851 (District official or employee while in the course of their duties or on account of those duties, or actions against a family member of a District official or employee); D.C. Code § 22-4502 (enhanced penalty for committing kidnapping “while armed” or with a dangerous weapon “readily available”).

¹⁶ Convictions have been upheld applying multiple enhancements. *C.f. Forte v. United States*, 856 A.2d 567 (D.C. 2004) (holding that “double enhancement” under senior citizen penalty enhancement statute and repeat offender statute was proper).

¹⁷ For instance, the status of the complainant and the defendant’s use of a weapon.

¹⁸ The existence of more than one aggravating factors may be a significant factor in sentencing, however.

¹⁹ For example, under current law the unarmed kidnapping of a 65 year old taxi cab driver is subject to two penalty enhancements under D.C. Code § 22-3601, and § 22-3751, each of which permits a sentence 1 ½ times the maximum sentence otherwise allowed. Kidnapping ordinarily carries a maximum sentence of 30 years. If these enhancements are both applied, kidnapping a 65 year old taxi driver would be subject to a maximum 60 year sentence, the same as first degree murder. D.C. Code § 22-2104.

Third, the RCC aggravated kidnapping statute provides new, heightened penalties based on recklessness as to the status of the complainant as an on-duty law enforcement officer, public safety employee, a vulnerable adult, or person operating a personal motor vehicle to provide private vehicle-for-hire services. The current kidnapping statute has no gradations and does not reference the status of the complainant, but multiple statutes in the current D.C. Code authorize enhanced penalties for kidnapping committed against certain groups of persons.²⁰ Currently, the D.C. Code does not enhance crimes based on the status of the complainant as an on-duty law enforcement officer, public safety employee, or person operating a personal motor vehicle to provide private vehicle for hire service. By contrast, through its use of the term “protected person,” the RCC aggravated kidnapping offense authorizes heightened penalties if the accused is reckless as to the fact the complainant is an on-duty law enforcement officer, public safety employee, or person operating a personal motor vehicle to provide private vehicle for hire services. Such penalties are consistent with enhancements for assault-type,²¹ robbery²², and homicide offenses,²³ and reflect some unique vulnerabilities of such complainants.²⁴ Requiring a reckless culpable mental state is also consistent with many current statutes that authorize enhanced penalties based on the complainant’s status.²⁵ Including recklessness as to the complainant being an on-duty law enforcement officer, public safety employee, a vulnerable adult, or person operating a personal motor vehicle to provide private vehicle-for-hire services as an element of aggravated kidnapping removes a possible gap in current law, and improves the consistency and proportionality of the revised code.

Fourth, the aggravated kidnapping statute provides new, heightened penalties based on the crime being committed for the purpose of harming the complainant because of his or her status as a law enforcement officer or public safety employee. The current kidnapping statute has no gradations and does not reference a purpose of harming the complainant because of the status of the complainant, although multiple statutes in the current D.C. Code authorize enhanced penalties for kidnapping committed against certain groups of persons.²⁶ By contrast, the aggravated kidnapping statute includes as an element committing criminal restraint for the

²⁰ D.C. Code § 22-851 (District official or employee while in the course of their duties or on account of those duties, or actions against a family member of a District official or employee); D.C. Code § 22-3611 (minors); D.C. Code § 22-3601 (persons over 65 years of age); D.C. Code §§ 22-3751; 22-3752 (taxicab drivers); and D.C. Code §§ 22-3751.01; 22-3752 (transit operators and Metrorail station managers); and D.C. Code § 22-3602 (members of a citizen patrol).

²¹ RCC § 22A-1202

²² RCC § 22A-1201.

²³ RCC §§ 22A-1101-1102.

²⁴ For example, on-duty law enforcement and public safety officers performing investigative duties and private vehicle-for-hire services drivers may often enter situations where they are isolated with persons in enclosed places and more susceptible to unwanted interference with their personal movements; vulnerable adults may be targeted due to their limited ability to evade interference with their freedom of movement.

²⁵ Under current District law it is a defense to the senior citizen complainant enhancement that “the accused knew or reasonably believed the complainant was not 65 years old or older at the time of the offense, or could not have known or determined the age of the complainant because of the manner in which the offense was committed.” D.C. Code § 22-3601(c). Similarly, under the current minor complainant enhancement, it is a defense that “the accused reasonably believed that the complainant was not a minor [person less than 18 years old] at the time of the offense.” D.C. Code § 22-3611(b). The current assault of a law enforcement officer offense requires that the defendant was

²⁶ D.C. Code § 22-3602 (providing an enhanced penalty for kidnapping committed against “a member of a citizen patrol (“member”) while that member is participating in a citizen patrol, or because of the member’s participation in a citizen patrol”); D.C. Code § 22-851 (District official or employee while in the course of their duties or on account of those duties, or actions against a family member of a District official or employee);

purpose of harming another person due to that person's status as a law enforcement officer or public safety employee. In practice, this change only affects law enforcement officers and public safety employees who are not District employees, as kidnapping of any District employee is subject to more severe statutory penalties under current District law.²⁷ Heightened penalties for kidnapping with the purpose of harming the complainant because of the complainant's status as a law enforcement officer or public safety employee removes a possible gap in current law, and improves the consistency and proportionality of penalties.

Fifth, the aggravated kidnapping statute incorporates penalty enhancements for using a dangerous weapon or imitation dangerous weapon but requires that the defendant committing the offense by "displaying or touching another person" with the weapon. Current D.C. Code § 22-4502 provides enhanced penalties for committing kidnapping "while armed" or "having readily available" a dangerous weapon. District case law on D.C. Code § 22-4502 holds that the penalty enhancements are authorized if the accused either had "actual physical possession of [a weapon]";²⁸ or if the weapon was merely in "close proximity or easily accessible during the commission of the underlying [offense],"²⁹ provided that the accused also constructively possessed the weapon.³⁰ There is no requirement under D.C. Code § 22-4502 that the accused actually used the weapon to commit kidnapping.³¹ By contrast, the revised aggravated kidnapping statute requires that the defendant actually displayed a dangerous weapon or imitation dangerous weapon, or touched³² another person with the weapon. A defendant merely possessing or having a weapon readily available is insufficient to satisfy the element under subsection (a)(2)(C) for aggravated kidnapping, although such conduct is criminalized elsewhere in current law and the RCC as a separate offense with a lower penalty.³³ Including use of a dangerous weapon or imitation dangerous weapon within the aggravated kidnapping statute as an element of the offense improves the proportionality of punishment by matching more severe penalties to kidnappings in which the defendant actually uses a weapon.

One other change to the aggravated kidnapping offense is clarificatory in nature and is not intended to change current District law. The aggravated kidnapping offense requires that the defendant "knowingly" displayed or touched another person with a dangerous or imitation weapon. The penalty enhancement under D.C. Code § 22-4502 for committing kidnapping

²⁷ D.C. Code § 22-851. Subsection (a)(2)(B)(4) of the RCC aggravated criminal restraint offense provides liability for criminal restraints with the purpose of harming the complainant because of the complainant's status as a District employee.

²⁸ *Johnson v. United States*, 686 A.2d 200, 205 (D.C. 1996).

²⁹ *Clyburn v. United States*, 48 A.3d 147, 154 (D.C. 2012) (reversing sentencing enhancement under D.C. Code § 22-4502 when rifle was located in a different room from where defendant committed the underlying offense); cf. *Guishard v. United States*, 669 A.2d 1306, 1310 (D.C. 1995) (affirming sentencing enhancement under D.C. Code § 22-4502 when firearm was in a dresser drawer in the same room as the underlying offense).

³⁰ *Cox v. United States*, 999 A.2d 63, 69 (D.C. 2010) ("to have a weapon 'readily available,' one must at a minimum have constructive possession of it. To prove constructive possession, the prosecution was required to show that Cox knew the pistol was present in the car, and that he had not merely the ability, but also the intent to exercise dominion or control over it.").

³¹ See, *Morton v. United States*, 620 A.2d 1338, 1340 (D.C. 1993) (affirming sentencing enhancement under D.C. Code § 22-4502 when firearm was within arm's length, but no evidence that the firearm was ever used to further any crime).

³² Any type of physical contact with a dangerous weapon would satisfy the touching requirement. For example, if all other offense elements are satisfied, placing a knife or firearm to the complainant's back and telling them to walk to another location may constitute aggravated criminal restraint.

³³ See D.C. Code § 22-4514(b); RCC § 22A-XXXX [To be revised at a future date.]

“while armed” or “having readily available” a dangerous weapon does not specify a culpable mental state as to possession of a weapon. However, the DCCA has held that under §22-4502, the defendant must “*knowingly* be in control of the weapon.”³⁴ Consistent with this case law, the aggravated kidnapping statute requires that the defendant “*knowingly*” displayed or touched another person with a dangerous weapon or imitation weapon. Specifying the culpable mental state as to use of a dangerous weapon clarifies the RCC aggravated kidnapping offense.

Relation to National Legal Trends. *Codifying an aggravated kidnapping statute based on the status of the complainant, or whether the defendant used a dangerous or imitation weapon is not supported by national legal trends.*

First, the changes to law under the RCC’s kidnapping statute, which are incorporated into the RCC’s aggravated kidnapping statute are consistent with most criminal codes.³⁵

Second, it is unclear if barring multiple penalty enhancements from applying to a single kidnapping conviction is consistent with most criminal codes. CCRC staff has not researched whether other jurisdictions allow more than one penalty enhancement to apply to a single kidnapping conviction.

Third, including penalty enhancements based on the status of the complainant as elements of aggravated kidnapping is not consistent with most criminal codes. Of the twenty-nine states that have comprehensively reformed criminal codes influenced by the Model Penal Code (MPC) and have a general part³⁶ (hereinafter “reformed code jurisdictions”), none include heightened penalty gradations based on whether the complainant was a law enforcement officer, public safety employee, member of a citizen patrol, government official or employee, family member of a government official or employee, or transportation worker. Five reformed code jurisdictions include as an element of an aggravated form of kidnapping that the complainant was a child,³⁷ and one includes as an element that the complainant had a “profound intellectual disability.”³⁸

Fourth, including as an element of aggravated kidnapping that the defendant acted with the purpose of harming the complainant due to the complainant’s status as a law enforcement officer, public safety employee, participant in a citizen patrol, District official or employee, or family member of a District official or employee is not consistent with most criminal codes. As discussed above, none of the reformed code jurisdictions include as an element of aggravated kidnapping that the complainant was a law enforcement officer, public safety employee, participant in a citizen patrol, District official or employee, or family member of a District official or employee. However, CCRC staff has not researched whether other jurisdictions’ separate penalty enhancement statutes that may authorize heightened penalties for kidnapping based on the status of the complainant.

³⁴ *Robinson v. United States*, 100 A.3d 95, 105 (D.C. 2014) (emphasis original).

³⁵ See the Relation to National Legal Trends section in Commentary to the RCC’s Kidnapping offense.

³⁶ 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). In addition, Tennessee reformed its criminal code after the publication of this article.

³⁷ Ariz. Rev. Stat. Ann. § 13-1304 (under 15 years of age); 720 Ill. Comp. Stat. Ann. 5/10-2 (under 13 years of age); Ind. Code Ann. § 35-42-3-2 (under 14 years of age); N.J. Stat. Ann. § 2C:13-1 (under 16 years of age); Ohio Rev. Code Ann. § 2905.01 (under 13 years of age, and defendant had a sexual motivation).

³⁸ 720 Ill. Comp. Stat. Ann. 5/10-2.

Fifth, including as an element of aggravated kidnapping that the defendant used a dangerous weapon or imitation dangerous weapon to commit the offense is not consistent with most criminal codes. Of the 29 reformed code jurisdictions, four include as an element of an aggravated form of kidnapping that the defendant was armed with a dangerous weapon.³⁹ However, CCRC staff has not researched whether other jurisdictions' criminal codes include separate while-armed enhancement provisions that may authorize heightened penalties for kidnappings committed while armed.

³⁹ Ind. Code Ann. § 35-42-3-2; 720 Ill. Comp. Stat. Ann. 5/10-2 (dangerous weapon other than a firearm); Utah Code Ann. § 76-5-302; Tenn. Code Ann. § 39-13-305 (“accomplished with a deadly weapon or by displaying of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon”).

RCC § 22A-1402. Kidnapping

- (a) *Offense Definition.* A person commits the offense of kidnapping when that person:
- (1) Knowingly interferes to a substantial degree with another person's freedom of movement;
 - (2) In one of the following ways;
 - (A) Without that person's consent;
 - (B) With that person's consent obtained by causing bodily injury or a threat to cause bodily injury;
 - (C) With that person's consent obtained by deception, provided that, if the deception had failed, the defendant immediately would have obtained or attempted to obtain consent by causing bodily injury or a threat to cause bodily injury; or
 - (D) When that person is a child under the age of 16 or a person assigned a legal guardian, without the effective consent of that person's parent, person how has assumed the obligations of a parent, or legal guardian; and
 - (3) With intent to:
 - (A) Hold the complainant for ransom or reward;
 - (B) Use the complainant as a shield or hostage;
 - (C) Facilitate the commission of any felony or flight thereafter;
 - (D) Inflict bodily injury upon the complainant, or to commit a sexual offense as defined in RCC XX-XXXX against the complainant;
 - (E) Cause any person to believe that the complainant will not be released without suffering significant bodily injury, or a sex offense as defined in RCC XX-XXXX;
 - (F) Permanently deprive a parent, legal guardian, or other lawful custodian of custody of a minor; or
 - (G) Hold the person in a condition of involuntary servitude.
- (b) *Penalty.* Kidnapping is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
- (1) The terms "knowingly," and "with intent," have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "bodily injury," "consent," "deception," "effective consent," and "significant bodily injury" have the meanings specified in § 22A-1001.
 - (2) The term "relative" means a parent, grandparent, sibling, cousin, aunt, or uncle.
- (d) *Defenses.* It is a defense to prosecution under this section that the defendant is a relative of the complainant, acted with intent to assume personal custody of the complainant, and did not cause bodily injury or threaten to cause bodily injury to the complainant.
- (e) *Multiple Convictions for Related Offenses.* A person may not be sentenced for kidnapping if the interference with another person's freedom of movement was incidental to commission of offense.

Commentary

Explanatory Note. *This subsection establishes the kidnapping offense for the Revised Criminal Code (RCC). This offense criminalizes knowingly interfering with another person's freedom of movement, and with intent: to hold that person for ransom; to hold that person as a hostage or shield; to facilitate commission of any felony or flight thereafter; to inflict significant bodily injury or commit a sexual assault; to cause any person to believe that the complainant will not be released without suffering significant bodily injury, or a sex offense; to permanently deprive a parent or legal guardian of custody of a person under the age of 16; or to hold the person in a condition of involuntary servitude. Along with the revised aggravated kidnapping,⁴⁰ criminal restraint,⁴¹ and aggravated criminal restraint⁴² offenses, the revised kidnapping statute replaces the kidnapping⁴³ statute in the current D.C. Code.*

Subsection (a)(1) specifies that kidnapping requires that a person knowingly interfere to a substantial degree with another person's freedom of movement. The subsection specifies that a "knowingly" culpable mental state applies, which requires that the accused either consciously desired or was practically certain that he or she would interfere substantially with another person's freedom of movement. Interference with another person's freedom of movement requires that the other person must be prevented from moving as he or she would have desired absent the defendant's intervention.⁴⁴ Interference with a person's freedom of liberty can involve either causing a person to remain in a particular location or causing a person to move to another location.⁴⁵ Other restrictions on the person's liberty are not covered.⁴⁶ In addition, the restraint must be substantial; momentary or trivial interference is insufficient.⁴⁷

Subsection (a)(2) requires that the defendant interfere with another person's freedom of movement without consent, with consent obtained by causing bodily injury, threat of bodily injury, or deception. "Bodily injury" and "deception" are terms defined under RCC §22A-1001. A kidnapping premised on deception requires proof that the defendant would have immediately obtained or attempted to obtain consent by causing bodily injury or threatening to cause bodily injury if the deception had failed. Coercing someone to remain in confinement by means not

⁴⁰ RCC §22A-1401.

⁴¹ RCC §22A-1404.

⁴² RCC §22A-1403.

⁴³ D.C. Code § 22-2001.

⁴⁴ Even non-violent or non-coercive means of preventing a person from moving as he or she would have desired can constitute interference. For example, an employer ordering an employee to remain in an office all day may constitute interference with the employee's freedom of movement, though such conduct would not constitute kidnapping as the employer did not obtain the employee's consent through force, threats of bodily injury, or deception, nor did the employer have intent to achieve any of the goals listed in subsection (a)(3).

⁴⁵ Moving another person can include either moving a person against his or her will, such as by tying up and carrying away a person, or by causing the person to move by means of a threat or deception, such as by ordering a person to walk to a particular location under threat of bodily injury.

⁴⁶ For example, using force to compel someone to take off and hand over a ring would not constitute kidnapping, but may be criminalized as another offense in the RCC.

⁴⁷ Restrictions on the freedom of movement may be insubstantial even if they are of significant duration. For example, if a person barricades a door to prevent another from leaving a building, but there is an alternate and easily accessible exit, the interference would not be substantial regardless of how long the door remains barricaded.

specified in the RCC’s kidnapping statute, such as threatening to damage property, is not covered by the statute. If the restrained person is under the age of 16 however, the restraint can be accomplished by any means, so long as the person’s parent, person who has assumed the obligations of a parent, or legal guardian does not effectively consent to the restraint or movement.⁴⁸ The term “person who has assumed the obligations of a parent” reflects District case law describing persons standing *in loco parentis*.⁴⁹ The term “effective consent” is defined under RCC § 22A-1001. Per the rule of construction under RCC § 22A-207, the “knowingly” mental state also applies to this element. The defendant must be practically certain the other person does not consent, or that consent was obtained by causing bodily injury, threat of bodily injury, or deception, or in the case of a person under the age of 16, that the person’s parent, legal guardian, or person who has assumed the obligations of a parent does not effectively consent to the interference.

Subsection (a)(3) specifies that the defendant must act with intent to accomplish one of the goals listed in subsections (a)(3)(A)-(G). “Intent” is defined at RCC §22A-206 and requires that the defendant was practically certain or consciously desired that would achieve one of the goals listed in subsections (a)(2)(A)-(G). However, the defendant need not actually achieve any of the goals listed in subsections (a)(2)(A)-(G).⁵⁰

Subsection (a)(3)(A) specifies that kidnapping includes acting with intent to hold the complainant for ransom or reward. Holding a person for ransom or reward requires demanding anything of pecuniary value in exchange for release of the complainant.

Subsection (a)(3)(B) specifies that kidnapping includes acting with intent to use the complainant as a shield or hostage. Holding a person as a shield or for hostage requires using the person’s body as defense against potential attack, or to demand fulfillment of any condition in exchange for the person’s release.

Subsection (a)(3)(C) specifies that kidnapping includes acting with intent to facilitate the commission of a felony or the flight thereafter. The restraint or movement of the person must aid the commission or flight from the felony.⁵¹ Many offenses, such as robbery or sexual assaults, often involve interfering with another person’s freedom of movement with intent to facilitate that

⁴⁸ For persons under the age of 16, even non-violent or non-deceptive means of interfering with the person’s freedom of movement suffice for criminal restraint. For example, enticing a child to get into a car and remain in the car as it drives away with the truthful promise of candy at the final destination may constitute kidnapping assuming the defendant also satisfied the intent requirement under subsection (a)(3).

⁴⁹ *Martin v. United States*, 452 A.2d 360, 362 (D.C. 1982) (finding that there was no evidence that appellant stood in loco parentis with his 13-year-old cousin because the record reflected “at best . . . that appellant helped on occasion with the basic running of the household,” that disciplinary authority over the cousin had never been “specifically delegated” to appellant, and appellant had not “assumed any obligations (such as financial support) that would be ‘associated with one standing as a natural parent to a child.’”) (emphasis in original) (quoting *Fuller v. Fuller*, 135 U.S. App. D.C. 353 (1969)). The court in *Martin* stated that “in loco parentis refers to a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation. . . . It embodies the ideas of both assuming the parental status and discharging the parental duties.” *Martin*, 452 A.2d at 362 (internal citations omitted). The court noted that in loco parentis involves “more than a duty to aid or assist . . . It arises only when one is willing to assume all the obligations and to receive all the benefits associated with one standing as a natural parent to a child.” *Id.* (emphasis in original) (internal citations omitted). See also, *Byrd v. United States*, 705 A.2d 629, 632 (D.C. 1997) (stating that “a person who stands in the place of a biological parent at the time of a kidnapping is exempt from prosecution pursuant to [the kidnapping statute].”).

⁵⁰ For example, a defendant who restrains another with intent to commit a sexual offense against that person may be convicted of kidnapping even if the defendant does not actually commit the sexual offense.

⁵¹ For example, a bank robber who seizes and drives off with a security guard to prevent the guard from calling for help may be convicted of kidnapping.

offense. Although restraint or movement in the course of another offense may satisfy the elements of kidnapping per subsection (a)(3)(C), liability in these cases is limited by subsection (e), discussed below.

Subsection (a)(3)(D) specifies that kidnapping includes acting with intent to inflict bodily injury, or to commit a sexual offense against the complainant defined under [22A-XXXX].⁵² “Bodily injury” is a defined term under RCC § 22A-1001(18).

Subsection (a)(3)(E) specifies that kidnapping includes acting with intent to cause any person to believe that the complainant will not be released without suffering significant bodily injury⁵³ or a sexual assault. This element may be satisfied if the complainant or any other person believes the complainant will not be released at all, or will only be released after having suffered significant physical injury or being subjected to a sexual assault. This element does not require that the defendant actually intends to inflict significant bodily injury or to commit a sexual assault.

Subsection (a)(3)(F) specifies that kidnapping includes acting with intent to permanently deprive a parent, legal guardian, or other lawful custodian of custody of a minor. Temporary interference with lawful custody is insufficient.

Subsection (a)(3)(G) specifies that kidnapping includes acting with intent to hold a person in a condition of involuntary servitude.⁵⁴ Involuntary servitude requires compelling a person to perform acts by use of force, threat of force, or use of legal coercion.⁵⁵

Subsection (b) specifies relevant penalties for the offense.

Subsection (c)(1) cross-references applicable definitions located elsewhere in the RCC.

Subsection (c)(2) defines the term “relative” to include a parent, grandparent, sibling, cousin, aunt, or uncle. More distant relatives are not included within the definition.

Subsection (d) provides a defense to kidnapping if the defendant is a relative of the complainant, acted with intent to assume custody of the complainant, and did not cause bodily

⁵² There is some overlap between subsection (a)(3)(D) and subsection (a)(3)(C). For example, a defendant who interferes with another person’s freedom of movement in order to commit a felony sexual offense could be prosecuted for kidnapping under both subsections. However, subsection (a)(3)(D) is both broader and narrower than subsection (a)(3)(C). It is broader in that intent to facilitate misdemeanor assault or sexual assaults would not suffice under (a)(3)(C). It is narrower however in that it requires intent to inflict bodily injury or to commit a sexual offense, but other means of facilitating misdemeanor assaults or sexual assaults would not be covered.

⁵³ The seeming discrepancy between subsection (a)(3)(C) which requires intent to cause bodily injury and subsection (a)(3)(D) which requires intent to cause a person to believe the complainant will not be released without having suffered *significant* bodily injury is due to the different interests addressed in each subsection. Subsection (a)(3)(C) criminalizes cases in which the defendant had intent to inflict actual injury, whereas subsection (a)(3)(D) criminalizes cases in which the defendant merely had intent to *put another person in fear*, regardless of whether the defendant actually intended to inflict any injury on the complainant. Since subsection (a)(3)(D) only requires intent to cause another to be in fear, a more stringent requirement of intent to cause a person to believe the complainant will not be released without having suffered *significant* bodily injury is appropriate.

⁵⁴ Involuntary servitude alone, absent restraint, does not constitute kidnapping. A person may be held in a condition of involuntary servitude “more or less openly and in accustomed haunts.” Commentary to MPC § 212.2. Keeping a person in a condition of involuntary servitude without restraint may constitute separate offenses under the RCC [RCC § 22A-XXXX].

⁵⁵ See, *United States v. Kozminski*, 487 U.S. 931, 943–44 (1988) (holding that involuntary servitude requires labor “enforced by the use or threatened use of physical or legal coercion). Legal coercion requires the threat of legal sanction, such as when a “victim is coerced by threat of legal sanction to work off a debt to a master” or “compulsion of ... service by the constant fear of imprisonment under the criminal laws[.]” *Id.* (citing *Clyatt v. United States*, 197 U.S. 207 (1905); *United States v. Reynolds*, 235 U.S. 133 (1914)).

injury or threaten to cause bodily injury.⁵⁶ If the defendant interfered with a person's freedom of movement with any other intent, such as to hold the person for ransom or to inflict bodily injury, the defense is unavailable. Even if the defendant had intent to assume custody of the other person, if the defendant interfered with that person's freedom of movement by means of causing physical injury or threatening to cause bodily injury, the defense is unavailable. As "relative" is defined in the statute, the defense is only available if defendant is a parent, grandparent, sibling, aunt, uncle, or cousin of the kidnapped person. More distant relatives may not rely on the defense.

Subsection (e) provides that a person may not be sentenced for kidnapping if the interference with the other person's freedom of movement was incidental to the commission of any other offense. Interference is incidental to another offense when the defendant's primary purpose in interfering with the other person's freedom of movement was to commit the other offense.⁵⁷

Relation to Current District Law. *The revised kidnapping statute makes four substantive changes to current District law that improve the clarity and proportionality of the offense, and clearly describe all elements that must be proven, including culpable mental states.*

First, the RCC kidnapping offense codifies as a separate offense interference with a person's freedom of movement when the motive of the perpetrator is holding the person for ransom, the infliction of bodily injury, or other particularly harmful or dangerous acts. The current kidnapping statute requires that the defendant hold a person "for ransom, reward, *or otherwise*["]."⁵⁸ The DCCA has interpreted the "or otherwise" language broadly and held that "[t]he motive behind the kidnapping is unimportant, so long as the act was done with the expectation of benefit to the transgressor."⁵⁹ By contrast, the RCC divides the current kidnapping offense into two primary offenses, with criminal constraint providing liability for interference with another person's freedom of movement while the revised kidnapping requires an added wrongful intent that makes the restraint especially dangerous, harmful, or terrifying. Under the revised kidnapping statute, restraining another with intent to enact revenge or to seek companionship, or other purpose would not constitute kidnapping, unless the defendant acted

⁵⁶ Interfering with the freedom of movement of a relative may still be prosecuted under the parental kidnapping statute under D.C. Code § 16-1022.

⁵⁷ This provision is intended to re-instate DCCA case law prior to *Parker v. United States*, 692 A.2d 913 (D.C. 1997). Prior to *Parker*, District courts employed a fact-based inquiry to determine whether convictions for kidnapping and other offenses that arise from a single act or course of conduct should merge. In *Parker*, the DCCA held that instead of a fact-based inquiry, courts should only use a *Blockburger* elements test to determine if convictions for kidnapping and separate offenses should merge. The restraint need not be necessarily associated with commission of the other offense. For example, a person who commits robbery by forcing a person to walk into an adjacent room to locate valuables would not be guilty of criminal restraint because the movement was incidental to the robbery. However, a person who restrains another for a full day in order to facilitate commission of a robbery may still be convicted of a criminal restraint because the duration of the restraint far exceeded what would normally be associated with a robbery. See, e.g. *Sinclair v. United States*, 388 A.2d 1201 (D.C. 1978) (kidnapping was not incidental to robbery when the defendant held a person at gunpoint in a car and drove 25 blocks away).

⁵⁸ D.C. Code § 22-2001.

⁵⁹ *Walker v. United States*, 617 A.2d 525, 527 (D.C. 1992) (quoting *United States v. Wolford*, 144 U.S.App.D.C. 1, 5-6, 444 F.2d 876, 880-81 (1971) (internal quotations omitted). For example, restraining another person in order to enact revenge, or out of a desire for companionship could sustain a kidnapping conviction under current law. See *Walker*, 617 A.2d at 527.

with intent to achieve one of the goals listed in subsection (a)(3).⁶⁰ Codifying a new kidnapping offense based on the defendant's motive improves the proportionality of the RCC by separately labeling and penalizing more harmful and dangerous forms of interference with another person's freedom of movement.⁶¹

Second, the RCC kidnapping statute requires that the defendant interfere with another person's freedom of movement "to a substantial degree." The current kidnapping statute does not explicitly include any substantiality element, and the D.C. Court of Appeals (DCCA) has never discussed in a published opinion whether momentary or trivial interference with a person's freedom of movement suffices under the current kidnapping statute.⁶² By contrast, the revised kidnapping statute requires that the defendant interfere with another person's freedom of movement to a substantial degree. This excludes momentary or trivial interference with a person's freedom of movement. The precise effect on current law is somewhat unclear, as there is no case law on point. Requiring that the defendant interfere with another person's freedom of movement "to a substantial degree" improves the proportionality of the RCC by excluding cases that only involve trivial or momentary interference.⁶³

Third, the RCC kidnapping offense provides a defense if the defendant is a "relative" of a complainant, if the defendant had intent to assume custody of the complainant and did not cause or threaten to cause bodily injury. The current kidnapping statute provides an exception to liability if the victim is a minor, and the defendant is the victim's parent. However, the current statute does not specify any further conditions for the exception, and it is unclear whether the current statute's parental exception applies in all kidnapping cases or is inapplicable if the parent uses force or threats to restrain the child. Case law has not resolved this ambiguity.⁶⁴ By contrast, the revised kidnapping statute's defense applies to relatives⁶⁵ not just parents of the complainant. However, the defense requires that the defendant had intent to assume custody of the complainant and that the defendant did not cause bodily injury or threaten to cause bodily injury. The defense is not available if the defendant interfered with another person's freedom of movement without that person's consent, by causing or threatening to cause bodily injury, or by

⁶⁰ For example, a person who restrains another with intent to enact revenge would likely have intent to cause bodily injury, or intent to cause another person to believe that the complainant will not be released without suffering significant bodily injury.

⁶¹ For example, a person who in the heat of the moment blocks a door to prevent his significant other to leave in the midst of an argument may be guilty of kidnapping under current law, and subject to the same penalty as a person who, after substantial planning, forcibly seizes a person, transports them to another location, and holds them for ransom on fear of death. Under the RCC, these two types of conduct would be penalized differently, as a criminal restraint and kidnapping.

⁶² DCCA case law discussing whether kidnapping should merge with other offenses has suggested that relatively brief interference with another person's freedom of movement can constitute kidnapping. *E.g.*, *Sinclair v. United States*, 388 A.2d 101, 1204 (D.C. 1978) (noting that "victims of [rape or robbery] are detained against their will while the criminal is accomplishing his objective"). This case law implies that even the brief detention associated with an ordinary street robbery is sufficient for kidnapping. However, the DCCA has never specifically decided whether on its own, such a brief detention would satisfy the elements of kidnapping.

⁶³ If a defendant intended to interfere with a person's freedom of movement to a substantial degree but failed to do so and was only able to interfere in an insubstantial manner, attempt liability may still be applicable depending on the facts of the case.

⁶⁴ In *Byrd v. United States*, 705 A.2d 629, 633 (D.C. 1997), the DCCA held that a person acting *in loco parentis* may not rely on the parental exception if "the defendant has engaged in separate felonious conduct during the kidnapping which exposes the child to a serious risk of death or bodily injury." However, the DCCA explicitly declined to decide whether a "whether a biological parent may similarly forfeit the protection of the exception." *Id.* at 634 n. 7.

⁶⁵ As defined in the statute, which includes a parent, grandparent, sibling, cousin, aunt, or uncle.

deception.⁶⁶ The defense is also not available if the defendant had any intent other than to assume custody of the other person.⁶⁷ The revised offense's subsection (d) recognizes the diminished culpability and risk to the complainant in cases where a relative acts without the freely given consent of the parent, person who has assumed the obligations of a parent, or legal guardian, and no force or threats were used.⁶⁸ The District's parental kidnapping statute⁶⁹ may still provide liability in such conduct by a relative. Changing the parental exception to include a broader array of relatives but limiting the defense to cases in which the defendant acted with consent of the child and did not cause bodily injury or threaten to cause bodily injury, improves the proportionality of the revised offenses.

Fourth, the RCC kidnapping statute bars sentencing for the crime if the interference with a person's freedom of movement was incidental to the commission of any other offense.⁷⁰ Under current DCCA case law a defendant may be convicted of both kidnapping and another offense that arise from the same act or course of conduct, as long as kidnapping and the other offense each include "at least one element which the other one does not."⁷¹ By contrast, the RCC kidnapping statute reinstates the fact-based test applied by the DCCA prior to *Parker v. United States*,⁷² which required courts to make a determination in each case as to whether the kidnapping was merely incidental to another offense.⁷³ Where, as is common,⁷⁴ such interference with a person's freedom of movement is incidental to another offense,⁷⁵ the authorized punishment for the other offense is sufficient. The RCC kidnapping sentencing provision improves the proportionality of the offense.

Beyond these four changes to current District law, five other aspect of the revised kidnapping statute may constitute a substantive change of law.

⁶⁶ For example, a non-custodial parent that uses force to restrain a child with intent to assume custody of that child may still be convicted of kidnapping under the revised statute.

⁶⁷ A parent who holds his own child for ransom may still be convicted of kidnapping under the revised statute.

⁶⁸ See, *Byrd*, 705 A.2d at 633 (noting that the current kidnapping statute was with the intent that "a parent who kidnapped a child, however misguidedly, out of affection and disagreement over custody should not be prosecuted for that act alone").

⁶⁹ D.C. Code § 16-1022.

⁷⁰ By barring sentences for kidnapping, the revised statute allows for the possibility that convictions for kidnapping and the other offense may be entered for purposes of appeal. If the conviction for the other offense is reversed on appeal, the appellate court may order a lower court to sentence the defendant for the surviving kidnapping conviction.

⁷¹ *Malloy v. United States*, 797 A.2d 687, 691 (D.C. 2002)

⁷² 692 A.2d 913 (D.C. 1997). In *Parker*, the DCCA applied a new test for how to determine, in the absence of legislative intent, whether charged offenses should merge. The *Parker* ruling applied the new "elements" test the DCCA first adopted in *Byrd v. United States*, 598 A.2d 386 (D.C.1991) (en banc) because there was no legislative intent discernible as to whether kidnapping should merge with murder.

⁷³ E.g., *West v. United States*, 599 A.2d 788, 793 (D.C. 1991); *Vines v. United States*, 540 A.2d 1107, 1109 (D.C. 1988); *Robinson v. United States*, 388 A.2d 1210, 1211–12 (D.C. 1978).

⁷⁴ Many offenses against persons commonly involve some type of significant, non-consensual interference with another person's freedom of movement. For example, victims of robberies, assaults, sexual assaults, and homicides are frequently subjected to threats or physical restraint that prevent them from fleeing. Under current District law, such offenses against persons typically would provide the basis for a kidnapping charge. In practice, however, kidnapping charges are not typically brought in cases with such offenses against persons.

⁷⁵ E.g., *Robinson*, 388 A.2d at 1212–13 (holding that when defendant dragged a person 63 paces over the course of a few moments in order to commit a sexual assault, the "seizure and asportation was clearly incidental to the crime of assault with intent to rape" and that the conduct should not constitute two separate crimes.).

First, the RCC kidnapping statute provides that a person is not liable for interference with another's freedom of movement unless they: did not consent; their consent was obtained by causing bodily injury or the threat of causing bodily injury; or their consent was obtained by deception where the defendant would have been willing to resort to force or threat of force should the deception fail. The current kidnapping statute is silent as to whether and by what means the defendant must interference with the complainant's freedom of movement. The current statute just broadly states that a person commits kidnapping by "seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, or carrying away any individual",⁷⁶ but none of these terms are statutorily defined. The DCCA has generally recognized that kidnapping requires an "involuntary seizure,"⁷⁷ which includes forcible seizures⁷⁸, or restraining a person by threat of force.⁷⁹ Current District practice also recognizes that a person can commit kidnapping by "seiz[ing], confin[ing], abduct[ing], or carr[ying] away [the complainant] against his/her will"⁸⁰ The plain text of the current statute also suggests that a person can commit kidnapping without resorting to force or threats, by "inveigling" or "decoying" another person, and District practice has recognized that the current statutory language in part targets deceptive behavior.⁸¹ However, the DCCA has never discussed in a published opinion whether a deception that causes a person to change how they otherwise would exercise their freedom of movement can alone constitute kidnapping, absent proof that the defendant would have resorted to force should the deception fail.⁸² Federal courts interpreting an analogous federal kidnapping statute⁸³ are split as to whether deception alone can constitute

⁷⁶ The current statute states that a person can commit kidnapping by "seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, or carrying away any individual by any means whatsoever[.]" D.C. Code § 22-2001.

⁷⁷ *Walker v. United States*, 617 A.2d 525, 527 (D.C. 1992) (noting that "involuntary seizure is the very essence of the crime of kidnapping"); *Davis v. United States*, 613 A.2d 906, 912 (D.C. 1992) ("To prove a kidnapping, the government must show that the defendant confined the complainant with specific intent to detain the complainant for "ransom or reward or otherwise" and that such detention was involuntary or by use of coercion[.]")

⁷⁸ *E.g., Hughes v. United States*, 150 A.3d 289, 306 (D.C. 2016) (holding that evidence showing defendant grabbed victim by the hair and pushing her into a changing room was sufficient to prove that she had been seized and detained involuntarily).

⁷⁹ *E.g., Battle v. United States*, 515 A.2d 1120 (D.C. 1986) (defendant committed kidnapping by displaying a gun, got into complainant's car, and drove the car away to a different location where the complainant would be held).

⁸⁰ D.C. Crim. Jur. Instr. § 4.303 Kidnapping.

⁸¹ D.C. Crim. Jur. Instr. § 4.303 Kidnapping ("The Committee has omitted these forms of kidnapping in the interest of simplification. But in cases where inveigling, enticing or decoying are involved, the Committee suggests the following in place of the first element: "That the defendant inveigled, enticed, decoyed [choose the appropriate word] the complainant." The court should then read the second element. It should also provide an appropriate definition of the words "inveigle" or "decoy" as follows: "To 'inveigle' means to lure or entice or lead astray a person by false representations or promises or other deceitful means." "The word 'decoy' means enticement or luring a person by some trick, fraud or temptation.").

⁸² *Miller v. United States*, 138 F.2d 258, 260 (8th Cir.1943) (defendant initially deceived complainant by lying about taking her to see her dying grandfather, then enslaved complainant and kept her in servitude by using beatings and death threats).

⁸³ *United States v. Wolford*, 444 F.2d 876, 879-80 (D.C. Cir. 1971) ("For all practical purposes, the conduct prohibited by section 2101 is identical to that proscribed by the Federal Kidnaping Act, as presently worded, 18 U.S.C. 1201 (1964),⁶ with the exception of the requirement of the federal statute that the complainant be transported in interstate or foreign commerce. For this reason, and because both statutes were enacted by Congress, decisions construing the meaning and application of the Federal Kidnaping Act may be resorted to as an aid in determining the meaning of the similar language employed in the District statute.); D.C. Crim. Jur. Instr. § (noting that the District's kidnapping statute is "intended to cover the same acts as the federal kidnapping statute 18 U.S.C. § 1201 (a)(1)").

kidnapping.⁸⁴ The RCC’s kidnapping statute provides that kidnapping requires a lack of consent, consent obtained by causing bodily injury or the threat of causing bodily injury, or in cases involve consent obtained by deception, requires that the defendant would have immediately resorted to force or threats should the deception fail.⁸⁵ A factfinder must evaluate whether a person who uses deception to lure a complainant to another location, but who is stopped en route by a third party, possessed the intent to use force or threats should the third party not have intervened.⁸⁶ Without proof of such additional intent, the person would not be guilty of a kidnapping. The revised language improves the clarity and proportionality⁸⁷ of the offense.

Second, the RCC’s kidnapping statute omits the word “entices.” The current kidnapping statute states that a person commits kidnapping by “enticing . . . any individual . . . with intent to hold or detain such individual for ransom, reward, or otherwise[.]”⁸⁸ Under a plain language reading, the current kidnapping statute provides liability for merely enticing a person with intent to hold or detain that person for some personal benefit, even if the person was never actually held. However, the DCCA has never discussed in a published opinion whether such conduct would actually constitute kidnapping, and such an interpretation would run counter to case law requiring the kidnapping to be “involuntary” in nature.⁸⁹ The RCC’s kidnapping statute resolves this ambiguity by providing that only use of force and certain threats—threats of bodily injury— or deceptions may suffice for liability as kidnapping.⁹⁰ A person cannot commit kidnapping merely by offering some reward, absent the use of force or threats, or without actually interfering with another person’s freedom of movement.⁹¹ These limitations improve the clarity and proportionality of the offense, by more clearly defining the scope of the offense, and only including conduct dangerous enough to warrant the penalties under the kidnapping statute.⁹²

⁸⁴ *United States v. Corbett*, 750 F.3d 245, 246 (2d Cir. 2014) (“Other circuits differ as to whether a defendant who first “takes” control of his victim by “decoy” or trick must intend to back up his pretense with physical or psychological force in order to “hold” the unwilling victim under the statute. *Compare United States v. Boone*, 959 F.2d 1550, 1555 & n. 5 (11th Cir.1992) (requiring that the defendant “ha[ve] the willingness and intent to use physical or psychological force to complete the kidnapping in the event that his deception fail[s]”), with *United States v. Hoog*, 504 F.2d 45, 50–51 (8th Cir.1974) (finding the evidence to be sufficient where the defendant promised the victim a ride and then kept her in his car by inventing an emergency detour).”).

⁸⁵ Deception can fail either by the complainant realizing that he or she has been deceived, or by a third party intervening on behalf of the complainant.

⁸⁶ The defendant’s motive for deceiving the other person, whether the defendant was armed, or an actual attempt to use force or threats may all be relevant to determinations of the defendant’s willingness to resort to force or threats should the deception fail.

⁸⁷ Absent the RCC specification that consent by deception must be accompanied by an intent to use bodily injury or threat of bodily injury if necessary, a broad range of otherwise accepted, legal conduct may fall within the scope of the RCC criminal restraint and current kidnapping statute. For example, if a defendant lures another person to a location, and convinces the person to remain in that location by false promise of employment, and the defendant was willing to resort to force or threats should the other person realize that there is no actual employment to be had, the defendant could be convicted of kidnapping, assuming the defendant also had intent to achieve one of the goals under subsection (a)(3).

⁸⁸ D.C. Code § 22-2001.

⁸⁹ *C.f. Walker*, 617 A.2d at 527 (noting that “involuntary seizure is the very essence of the crime of kidnapping”).

⁹⁰ For example, if a person is coerced into staying in a particular location under threat of damage to that person’s property, no kidnapping has occurred.

⁹¹ However, a person can commit kidnapping by initially enticing another person with offer of some benefit as a means of luring the other person to move to or remain in a particular location as long as the defendant also uses force, threats.

⁹² Since the RCC kidnapping statute requires intent to achieve one of the goals under subsection (a)(3), it is unlikely, though possible, that a defendant could satisfy all the elements of kidnapping without using force, threat of force, or

Third, the RCC kidnapping statute sets the age of consent for interference with freedom of movement at 16 years. The current kidnapping statute does not specify whether a person commits kidnapping by restraining or moving a child with the child's consent, but without the child's parent or legal guardian's consent. The DCCA has never determined whether a person can commit kidnapping by taking a child with the child's consent, but without the consent of a parent or legal guardian.⁹³ However, the RCC kidnapping statute specifies that a person may commit kidnapping by interfering with the freedom of movement of a person under the age of 16, if a parent, legal guardian, or person who has assumed the obligations of a parent has not freely consented to the interference, regardless of whether the person under 16 has provided consent.⁹⁴ Conversely, the RCC kidnapping statute provides that a 16 or 17 year old may freely consent to an interference with their freedom of movement notwithstanding the lack of consent by his or her parents.⁹⁵ Specifying that a person may commit kidnapping of a person under the age of 16, if the person's parent, person who has assumed the obligations of a parent, or legal guardian does not freely consent clarifies the law in the RCC.

Fourth, the RCC kidnapping statute specifies that the defendant must have "knowingly" interfered with another person's freedom of movement. The current kidnapping statute references as one means of committing the offense that the defendant acted "with the intent to hold or detain",⁹⁶ but it is not clear whether this culpable mental state applies to other elements of the offense, and the phrase "with the intent" is not defined in the statute. In one case the DCCA stated that the current kidnapping statute requires that the defendant had "specific intent to detain the complainant"⁹⁷ although it is unclear whether the DCCA in that case was referring only to the defendant's motive rather than their awareness of the objective elements of the offense. Current District practice appears to treat the kidnapping as a "general intent" offense.⁹⁸ The revised kidnapping statute specifies that a "knowingly" culpable mental state applies to the element of interfering with another person's freedom of movement. Applying a knowledge requirement to statutory elements that distinguish innocent from criminal behavior

deception. For example, it is unlikely a person would hold another person hostage or for ransom without using force, threat of force, or deception.

⁹³ *But see, Blackledge v. United States*, 871 A.2d 1193, 1197 (D.C. 2005) (holding that convictions for kidnapping and enticing a minor do not merge, noting that "the kidnapping statute requires . . . that the complainant was seized involuntarily through the defendant's use of mental or physical coercion; however, consent is never a valid defense to child enticement, and therefore the government is not required to show that the child was taken involuntarily."). This language suggests that kidnapping requires, even in the case of minors, that the defendant seize another person "involuntarily", and that kidnapping does not criminalize moving or confining a minor by means of enticement.

⁹⁴ For example, a person who lures a child with candy may still be guilty of kidnapping even if the child genuinely wanted to go away with the defendant, if the child's parents did not provide consent.

⁹⁵ For example, an eighteen year old ("A") would not be guilty of kidnapping for convincing a sixteen year old ("B") to permanently live with A when A knows that the parents of the B wanted B to remain at home, and A did not use bodily injury, threat of bodily injury, or deception.

⁹⁶ See D.C. Code § 22-2001 ("...holding or detaining, or with the intent to hold or detain, such individual for ransom or reward or otherwise...").

⁹⁷ *Davis v. United States*, 613 A.2d 906, 912 (D.C. 1992) ("To prove a kidnapping, the government must show that the defendant confined the complainant with specific intent to detain the complainant for 'ransom or reward or otherwise' and that such detention was involuntary or by use of coercion; the detention may be for any purpose that the defendant believes might benefit him.").

⁹⁸ Redbook § 4.303 Kidnapping requires that the accused acted "voluntarily and on purpose, and not by mistake or accident," which accords with the jury instructions treatment of "general intent," not "specific intent" offenses. See Redbook § 3.100 Defendant's State of Mind.

is a well-established practice in American jurisprudence.⁹⁹ Specifying a culpable mental state for the offense improves the clarity of the RCC and is consistent with requirements for most other offenses.

Fifth, the RCC kidnapping statute does not separately criminalize a conspiracy to commit kidnapping. The District’s current kidnapping statute specifically provides that any person who conspires to commit kidnapping “shall be deemed to have violated the provisions of this section.”¹⁰⁰ The current kidnapping statute’s reference to a conspiracy, however, does not specify what culpable mental states, if any, apply to the conspiracy. By contrast, under the RCC criminal restraint statute, conspiracy to commit criminal restraint is subject to the RCC’s general conspiracy statute. The RCC’s general conspiracy statute details the culpable mental state and other requirements for proof of a conspiracy in a manner broadly applicable to all offenses. To the extent that the RCC’s general conspiracy provision differs from the law on conspiracy as applied to the current kidnapping statute, relying on the RCC’s general conspiracy provision may constitute a change in current law.¹⁰¹ This change improves the clarity and consistency of the revised offense.

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

The RCC kidnapping statute does not contain special provisions regarding jurisdiction. The current kidnapping statute states that “[t]his section shall be held to have been violated if the seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia.”¹⁰² This language apparently is intended to ensure that District courts have jurisdiction over kidnappings that do not occur entirely within the District of Columbia. However, it is unclear whether this language changes the scope of jurisdiction that a District court would otherwise have over kidnapping cases. The DCCA has generally held that District courts have jurisdiction over alleged offenses if “one of several constituent elements to the complete offense” occurs within the District, “even though the remaining elements occurred outside of the District.”¹⁰³ Consequently, although the DCCA has not applied this rule to kidnapping cases, it seems that District courts would have jurisdiction over any case in which a person was seized or held within the District, regardless of whether the person was initially seized outside of the District, or if the person were seized within the District

⁹⁹ See *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

¹⁰⁰ D.C. Code § 22-2001. “If 2 or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and 1 or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.”

¹⁰¹ For discussion on the RCC conspiracy statute’s possible changes to current District law, see First Draft of Report #12, Definition of Criminal Conspiracy.

¹⁰² D.C. Code § 22-2001.

¹⁰³ *United States v. Baish*, 460 A.2d 38, 40–41 (D.C. 1983), abrogated on other grounds by *Carrell v. United States*, 80 A.3d 163 (D.C. 2013).

and transported out of the District.¹⁰⁴ The RCC kidnapping statute eliminates jurisdiction language specific to kidnapping. In addition to general case law providing authority for offenses if “one of several constituent elements to the complete offense” occurs within the District,”¹⁰⁵ RCC § 22A-303 specifically provides jurisdiction for conspiracies formed within the District when the object of the conspiracy is engage in conduct outside of the District if the conduct would constitute a crime under D.C. Code.¹⁰⁶ District courts would therefore have jurisdiction over conspiracies to commit kidnapping outside of the District. Omitting special jurisdiction language from the criminal restraint statute improves the law’s clarity by omitting unnecessary language and making the offense more consistent with other offenses.

Relation to National Legal Trends. *The above mentioned changes to current District law are supported by national legal trends.*

First, requiring that the defendant acted with one of the enumerated motives is consistent with the kidnapping statutes adopted by the twenty-nine states that have comprehensively reformed criminal codes influenced by the Model Penal Code (MPC) and have a general part¹⁰⁷ (hereinafter “reformed code jurisdictions”). None of the 29 states’ kidnapping statutes include a catchall provision similar to the District’s statute criminalizing restraints “for ransom or reward or otherwise.”¹⁰⁸ A large majority of reformed code jurisdictions’ kidnapping statutes include intent to hold another for random or reward¹⁰⁹; to use the complainant as a shield or hostage¹¹⁰; to facilitate the commission of any felony or flight thereafter¹¹¹; or to inflict bodily injury upon

¹⁰⁴ For example, a person who attempts to lure a person in another jurisdiction into the District for purposes of kidnapping that person may be guilty of attempted kidnapping, assuming that the defendant’s conduct satisfied the dangerous proximity test.

¹⁰⁵ *Baish*, 460 A.2d at 40–41.

¹⁰⁶ RCC § 22A-303 (c).

¹⁰⁷ 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). In addition, Tennessee reformed its criminal code after the publication of this article.

¹⁰⁸ D.C. Code § 22-2001.

¹⁰⁹ Ala. Code § 13A-6-43; Alaska Stat. Ann. § 11.41.300; Ark. Code Ann. § 5-11-102; Ariz. Rev. Stat. Ann. § 13-1304; Conn. Gen. Stat. Ann. § 53a-92; Del. Code Ann. tit. 11, § 783A; Haw. Rev. Stat. Ann. § 707-720; 720 Ill. Comp. Stat. Ann. 5/10-2; Ind. Code Ann. § 35-42-3-2; Kan. Stat. Ann. § 21-5408; Ky. Rev. Stat. Ann. § 509.040; Me. Rev. Stat. tit. 17-A, § 301; Minn. Stat. Ann. § 609.25; Mo. Ann. Stat. § 565.110; Mont. Code Ann. § 45-5-303; N.D. Cent. Code Ann. § 12.1-18-01; N.H. Rev. Stat. Ann. § 633:1; N.J. Stat. Ann. § 2C:13-1; N.Y. Penal Law § 135.25; Ohio Rev. Code Ann. § 2905.01; Or. Rev. Stat. Ann. § 163.235; 18 Pa. Stat. Ann. § 2901; S.D. Codified Laws § 22-19-1; Tenn. Code Ann. § 39-13-304; Tex. Penal Code Ann. § 20.04; Utah Code Ann. § 76-5-302; Wash. Rev. Code Ann. § 9A.40.020.

¹¹⁰ Ala. Code § 13A-6-43; Alaska Stat. Ann. § 11.41.300; Ark. Code Ann. § 5-11-102; Ariz. Rev. Stat. Ann. § 13-1304; Del. Code Ann. tit. 11, § 783A; Haw. Rev. Stat. Ann. § 707-720; Ind. Code Ann. § 35-42-3-2; Kan. Stat. Ann. § 21-5408; Ky. Rev. Stat. Ann. § 509.040; Me. Rev. Stat. tit. 17-A, § 301; Minn. Stat. Ann. § 609.25; Mo. Ann. Stat. § 565.110; Mont. Code Ann. § 45-5-303; N.D. Cent. Code Ann. § 12.1-18-01; N.H. Rev. Stat. Ann. § 633:1; N.J. Stat. Ann. § 2C:13-1; Ohio Rev. Code Ann. § 2905.01; Or. Rev. Stat. Ann. § 163.235; 18 Pa. Stat. Ann. § 2901; S.D. Codified Laws § 22-19-1; Tenn. Code Ann. § 39-13-304; Tex. Penal Code Ann. § 20.04; Utah Code Ann. § 76-5-302; Wash. Rev. Code Ann. § 9A.40.020.

¹¹¹ Ala. Code § 13A-6-43; Alaska Stat. Ann. § 11.41.300; Ark. Code Ann. § 5-11-102; Ariz. Rev. Stat. Ann. § 13-1304; Conn. Gen. Stat. Ann. § 53a-92; Del. Code Ann. tit. 11, § 783A; Haw. Rev. Stat. Ann. § 707-720; Kan. Stat. Ann. § 21-5408; Ky. Rev. Stat. Ann. § 509.040; Me. Rev. Stat. tit. 17-A, § 301; Minn. Stat. Ann. § 609.25; Mo. Ann. Stat. § 565.110; Mont. Code Ann. § 45-5-303; N.D. Cent. Code Ann. § 12.1-18-01; N.J. Stat. Ann. § 2C:13-1; N.Y. Penal Law § 135.25; Ohio Rev. Code Ann. § 2905.01; 18 Pa. Stat. Ann. § 2901; S.D. Codified Laws § 22-19-

the complainant, or to commit a sexual offense.¹¹² Although no reformed code jurisdictions' kidnapping statutes include intent to cause any person to believe that the complainant will not be released without suffering significant bodily injury, a majority do include a comparable "intent to terrorize the complainant or another" as an element of kidnapping.¹¹³ However, including intent to permanently deprive a parent, legal guardian, or other lawful custodian of custody of a minor; or to hold the person in a condition of involuntary servitude are not strongly supported by national criminal codes. Only a minority of reformed jurisdictions' kidnapping statutes include intent to permanently deprive a parent of legal custody¹¹⁴, or to hold a person in a condition of involuntary servitude.¹¹⁵

Second, requiring that interference must be "to a substantial degree" is supported by other criminal codes. A majority of reformed code jurisdictions' kidnapping statutes require that the defendant interfere with another person's freedom of movement to a substantial degree.¹¹⁶

Third, including a relative defense to kidnapping has mixed support from other reformed criminal codes. A minority of reformed code jurisdiction includes a relative defense to kidnapping or kidnapping-related offenses.¹¹⁷ The RCC's definition of "relative" differs from most reformed jurisdictions that statutorily recognize a relative defense. A slight majority of these jurisdictions define "relative" to include any "ancestor."¹¹⁸

1; Tenn. Code Ann. § 39-13-304; Tex. Penal Code Ann. § 20.04; Utah Code Ann. § 76-5-302; Wash. Rev. Code Ann. § 9A.40.020.

¹¹² Ala. Code § 13A-6-43; Alaska Stat. Ann. § 11.41.300; Ark. Code Ann. § 5-11-102; Ariz. Rev. Stat. Ann. § 13-1304; Conn. Gen. Stat. Ann. § 53a-92; Del. Code Ann. tit. 11, § 783A; Haw. Rev. Stat. Ann. § 707-720; 720 Ill. Comp. Stat. Ann. 5/10-2; Ind. Code Ann. § 35-42-3-2; Kan. Stat. Ann. § 21-5408; Ky. Rev. Stat. Ann. § 509.040; Me. Rev. Stat. tit. 17-A, § 301; Minn. Stat. Ann. § 609.25; Mo. Ann. Stat. § 565.110; Mont. Code Ann. § 45-5-303; N.D. Cent. Code Ann. § 12.1-18-01; N.H. Rev. Stat. Ann. § 633:1; N.J. Stat. Ann. § 2C:13-1; N.Y. Penal Law § 135.25; Ohio Rev. Code Ann. § 2905.01; Or. Rev. Stat. Ann. § 163.235; 18 Pa. Stat. Ann. § 2901; S.D. Codified Laws § 22-19-1; Tenn. Code Ann. § 39-13-304; Tex. Penal Code Ann. § 20.04; Utah Code Ann. § 76-5-302; Wash. Rev. Code Ann. § 9A.40.020.

¹¹³ Ala. Code § 13A-6-43; Ark. Code Ann. § 5-11-102; Ariz. Rev. Stat. Ann. § 13-1304; Conn. Gen. Stat. Ann. § 53a-92; Del. Code Ann. tit. 11, § 783A; Haw. Rev. Stat. Ann. § 707-720; Kan. Stat. Ann. § 21-5408; Ky. Rev. Stat. Ann. § 509.040; Minn. Stat. Ann. § 609.25; Mo. Ann. Stat. § 565.110; Mo. Ann. Stat. § 565.110; Mont. Code Ann. § 45-5-303; N.D. Cent. Code Ann. § 12.1-18-01; N.H. Rev. Stat. Ann. § 633:1; N.J. Stat. Ann. § 2C:13-1; N.Y. Penal Law § 135.25; Ohio Rev. Code Ann. § 2905.01; Or. Rev. Stat. Ann. § 163.235; 18 Pa. Stat. Ann. § 2901; S.D. Codified Laws § 22-19-1; Tenn. Code Ann. § 39-13-304; Tex. Penal Code Ann. § 20.04; Utah Code Ann. § 76-5-302; Wash. Rev. Code Ann. § 9A.40.020.

¹¹⁴ Colo. Rev. Stat. Ann. § 18-3-302; Del. Code Ann. tit. 11, § 783A; 720 Ill. Comp. Stat. Ann. 5/10-2; Ind. Code Ann. § 35-42-3-2; Ky. Rev. Stat. Ann. § 509.040; Mo. Ann. Stat. § 565.110; N.H. Rev. Stat. Ann. § 633:1; N.J. Stat. Ann. § 2C:13-1; Tenn. Code Ann. § 39-13-304; Utah Code Ann. § 76-5-302.

¹¹⁵ Ariz. Rev. Stat. Ann. § 13-1304; Haw. Rev. Stat. Ann. § 707-720; Minn. Stat. Ann. § 609.25; Mont. Code Ann. § 45-5-303; N.D. Cent. Code Ann. § 12.1-18-01; Ohio Rev. Code Ann. § 2905.01; Utah Code Ann. § 76-5-302; Wis. Stat. Ann. § 940.31.

¹¹⁶ Alaska Stat. Ann. § 11.41.370; Ala. Code § 13A-6-40; Ark. Code Ann. § 5-11-101; Ariz. Rev. Stat. Ann. § 13-1301; Conn. Gen. Stat. Ann. § 53a-91; Del. Code Ann. tit. 11, § 786; Haw. Rev. Stat. Ann. § 707-700; Ky. Rev. Stat. Ann. § 509.010; Me. Rev. Stat. tit. 17-A, § 301; Mo. Ann. Stat. § 565.110, Mo. Ann. Stat. § 565.120, Mo. Ann. Stat. § 565.130; N.D. Cent. Code Ann. § 12.1-18-04; Or. Rev. Stat. Ann. § 163.225; 18 Pa. Stat. Ann. § 2901; S.D. Codified Laws § 22-19-1, S.D. Codified Laws § 22-19-17; Tenn. Code Ann. § 39-13-302; Tex. Penal Code Ann. § 20.01; Wash. Rev. Code Ann. § 9A.40.010.

¹¹⁷ Alaska Stat. Ann. § 11.41.300; Ala. Code § 13A-6-44; Ariz. Rev. Stat. Ann. § 13-1303; N.Y. Penal Law § 135.15; Or. Rev. Stat. Ann. § 163.225; 18 Pa. Stat. Ann. § 2902; Tex. Penal Code Ann. § 20.02; Wash. Rev. Code Ann. § 9A.40.030.

¹¹⁸ Alaska Stat. Ann. § 11.41.370; Ala. Code § 13A-6-40; Ariz. Rev. Stat. Ann. § 13-1301; Or. Rev. Stat. Ann. § 163.215; Tex. Penal Code Ann. § 20.01; Wash. Rev. Code Ann. § 9A.40.010.

Fourth, barring sentences for kidnapping if the interference with the other person's freedom of movement was incidental to the commission of another criminal offense is consistent with reformed criminal codes. A majority of reformed code jurisdictions either by statute¹¹⁹ or case law¹²⁰ bar sentences for both kidnapping and a separate offense if the kidnapping was incidental to another offense.

RCC § 1403. Aggravated Criminal Restraint

- (a) *Offense Definition.* A person commits the offense of aggravated criminal restraint when that person:
- (1) Commits criminal restraint as defined in RCC § 22-1404;
 - (2) In one or more of the following ways:
 - (A) Reckless as to the fact that the complainant is a protected person;
 - (B) With the purpose of harming the complainant because of the complainant's status as a:
 - (i) Law enforcement officer;
 - (ii) Public safety employee;
 - (iii) Participant in a citizen patrol;
 - (iv) District official or employee; or
 - (v) Family member of a District official or employee; or
 - (C) By means of knowingly displaying or touching another person with a dangerous weapon or imitation dangerous weapon.
- (b) *Penalty.* Aggravated criminal restraint is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section, the terms “reckless,” “purpose,” and “knowingly,” have the meanings specified in § 22A-206; and the terms “citizen patrol,” “dangerous weapon,” “District official or employee,” “family member,” “imitation dangerous weapon,” “law enforcement officer,” “protected person,” and “public safety employee” have the meanings specified in § 22A-1001.
- (d) *Multiple Convictions for Related Offenses.* A person may not be sentenced for criminal restraint if the interference with another person's freedom of movement was incidental to commission of any other offense.

Commentary

Explanatory Note. This section establishes the aggravated criminal restraint offense for the Revised Criminal Code. This offense criminalizes committing criminal restraint when the complainant was a protected person, for the purpose of harming a protected person, or if the

¹¹⁹ Ky. Rev. Stat. Ann. § 509.050

¹²⁰ *Hurd v. State*, 22 P.3d 12, 18 (Alaska Ct. App. 2001); *Summerlin v. State*, 756 S.W.2d 908, 910 (Ark. 1988); *Apodaca v. People*, 712 P.2d 467, 475 (Colo. 1985); *Weber v. State*, 547 A.2d 948, 958 (Del. 1988); *State v. Deguair*, 384 P.3d 893, 895 (Haw. 2016); *People v. Smith*, 414 N.E.2d 1117, 1121 (Ill. App. Ct. 1980); *State v. Buggs*, 547 P.2d 720, 730–31 (Kan. 1976); *State v. Taylor*, 661 A.2d 665, 667–68 (Me. 1995); *State v. Welch*, 675 N.W.2d 615, 620 (Minn. 2004); *State v. Williams*, 860 S.W.2d 364, 366 (Mo. Ct. App. 1993); *State v. Casanova*, 63 A.3d 169, 172 (N.H. 2013); *State v. Masino*, 466 A.2d 955, 960 (N.J. 1983); *People v. Miles*, 245 N.E.2d 688, 695 (N.Y. 1969); *State v. Logan*, 397 N.E.2d 1345, 1351–52 (Ohio 1979); *State v. Garcia*, 605 P.2d 671, 676–77 (Or. 1980); *Com. v. Hook*, 512 A.2d 718, 720 (Pa. 1986); *State v. Lykken*, 484 N.W.2d 869, 876 (S.D. 1992); *State v. White*, 362 S.W.3d 559, 581 (Tenn. 2012).

defendant committed the restraint by means of a dangerous weapon. Along with the revised kidnapping,¹²¹ aggravated kidnapping,¹²² and criminal restraint¹²³ offenses, the revised aggravated criminal restraint offense replaces the kidnapping offense in the current D.C. Code. Insofar as they are applicable to the current kidnapping offense, the aggravated criminal restraint offense replaces the protection of District public officials statute¹²⁴ and five complainant-specific penalty enhancements: the enhancement for senior citizens;¹²⁵ the enhancement for citizen patrols;¹²⁶ the enhancement for minors;¹²⁷ the enhancement for taxicab drivers;¹²⁸ and the enhancement for transit operators and Metrorail station managers¹²⁹ in the current D.C. Code. Insofar as it is applicable to the current kidnapping offense, the aggravated criminal restraint offense also replaces the current while-armed penalty enhancement.¹³⁰

Subsection (a)(1) states that aggravated criminal restraint requires that the defendant satisfy all the elements of criminal restraint as defined under RCC § 22A-1404.¹³¹ With respect to the commission of a criminal restraint, the aggravated criminal restraint offense does not require any additional culpable mental states that go beyond those specified in RCC § 22A-1404.

Subsection (a)(2)(A) specifies that a person commits aggravated criminal restraint if he or she commits criminal restraint and was reckless as to the fact that the complainant is a “protected person,” a term defined under RCC § 22A-1001, which includes “a law enforcement officer, while in the course of official duties”, “public safety employee, while in the course of official duties,” “transportation worker, while in the course of official duties,” “District official or employee, while in the course of official duties,” or a “citizen patrol member, while in the course of a citizen patrol.” Under subsection (a)(1), the defendant must have been reckless as to the complainant being a protected person, a culpable mental state defined in RCC § 22A-206, meaning the accused must disregard a substantial and unjustifiable risk that the complainant is a “protected person.”

Subsection (a)(2)(B) specifies that a person commits aggravated criminal restraint if he or she commits criminal restraint for the purpose of harming the complainant because of the complainant’s status as a law enforcement officer; public safety employee; participant in a citizen patrol; District official or employee; or a family member of a District official or employee. This aggravating circumstance requires that the accused acted with “purpose” a term defined at RCC § 22A-206, which means that accused must consciously desire to harm that person because of his or her status as a law enforcement officer, public safety employee, participant in a citizen patrol, district official or employee, or family member of a District official or employee.¹³² “Law enforcement officer,” “public safety employee,” “citizen patrol,” “District official or employee,” and “family member” are all defined terms in RCC § 22A-1001.

¹²¹ RCC §22A-1402.

¹²² RCC §22A-1401.

¹²³ RCC §22A-1404.

¹²⁴ D.C. Code § 22-851.

¹²⁵ D.C. Code § 22-3601.

¹²⁶ D.C. Code § 22-3602.

¹²⁷ D.C. Code § 22-3611.

¹²⁸ D.C. Code §§ 22-3751; 22-3752.

¹²⁹ D.C. Code §§ 22-3751.01; 22-3752.

¹³⁰ D.C. Code § 22-4502.

¹³¹ For discussion of the elements of criminal restraint, see Commentary to RCC § 22A-1404.

¹³² For example, a defendant who interferes with an off-duty police officer’s freedom of movement in retaliation for the officer arresting the defendant’s friend would constitute committing criminal restraint with the purpose of harming the decedent due to his status as a law enforcement officer.

Subsection (a)(2)(C) specifies that, as an alternative to the requirements of subsection (a)(1)-(a)(2), a person commits aggravated criminal restraint if he or she commits criminal restraint by displaying or touching another person with a dangerous weapon or imitation weapon. The phrase “by displaying or touching another person with a dangerous weapon or imitation dangerous weapon” should be broadly construed to include kidnappings that only minimally display or involve contact with such a weapon.¹³³ The terms “dangerous weapon” or “imitation weapon,” are defined in RCC § 22-1001. Subsection (a)(2)(C) specifies that a “knowing” culpable mental state applies to this element, which requires that the defendant was practically certain, or consciously desired, that he or she would display or touch another person with a dangerous weapon or imitation weapon.

Relation to Current District Law. *The revised aggravated criminal restraint offense changes current District law in five main ways that improve the proportionality of penalties, and clearly describe all elements that must be proven, including culpable mental states*

First, the RCC aggravated criminal restraint statute incorporates all changes to current law included in the non-aggravated RCC criminal restraint statute.¹³⁴ A person commits aggravated criminal restraint if he or she commits criminal restraint as defined under RCC § 22A-1404, plus proof of one of the additional elements listed under subsection (a)(2).

Second, the RCC aggravated criminal restraint statute incorporates multiple penalty enhancements based on the status of the complainant into a new criminal restraint gradation, capping the effect of these enhancements. The D.C. Code currently provides multiple penalty enhancements for the commission of a kidnapping offense,¹³⁵ without specifying whether or how these enhancements may be combined or “stacked” when multiple enhancements are applicable to a single charge. DCCA case law has not addressed whether most combinations of these penalty enhancements can be combined, but the combination of at least some of these enhancements has been upheld.¹³⁶ By contrast, under the aggravated criminal restraint offense, the penalty for criminal restraint cannot be enhanced two or more times based on any of the listed aggravating factors.¹³⁷ While multiple aggravating factors may be charged, proof of just one is sufficient for an aggravated criminal restraint conviction and proof of others does not change the maximum statutory penalty for the crime.¹³⁸ Capping the effect of penalty

¹³³ For example, assuming the other elements of the offense are proven, rearranging one’s coat to provide a momentary glimpse of part of a knife, or holding a sharp object to someone’s back without actually causing injury, may be sufficient for liability under subsection (a)(3).

¹³⁴ See Commentary to RCC § 22A-1404.

¹³⁵ See, e.g., D.C. Code § 22-3602 (providing an enhanced penalty for kidnapping committed against “a member of a citizen patrol (“member”) while that member is participating in a citizen patrol, or because of the member’s participation in a citizen patrol”); D.C. Code § 22-851 (District official or employee while in the course of their duties or on account of those duties, or actions against a family member of a District official or employee); D.C. Code § 22-4502 (enhanced penalty for committing kidnapping “while armed” or with a dangerous weapon “readily available”).

¹³⁶ Convictions have been upheld applying multiple enhancements. *C.f. Forte v. United States*, 856 A.2d 567 (D.C. 2004) (holding that “double enhancement” under senior citizen penalty enhancement statute and repeat offender statute was proper).

¹³⁷ For instance, the status of the complainant and the defendant’s use of a weapon.

¹³⁸ The existence of more than one aggravating factors may be a significant factor in sentencing, however.

enhancements improves the proportionality of the District law by preventing aggravated forms of the offense from being penalized the same as much more serious offenses.¹³⁹

Third, the RCC aggravated criminal restraint statute provides new, heightened penalties based on recklessness as to the status of the complainant as an on-duty law enforcement officer, public safety employee, a vulnerable adult, or person operating a personal motor vehicle to provide private vehicle-for-hire services. The current kidnapping statute has no gradations and does not reference the status of the complainant, but multiple statutes in the current D.C. Code authorize enhanced penalties for kidnapping committed against certain groups of persons.¹⁴⁰ Currently, the D.C. Code does not enhance crimes based on the status of the complainant as an on-duty law enforcement officer, public safety employee, or person operating a personal motor vehicle to provide private vehicle for hire service. By contrast, through its use of the term “protected person,” the RCC aggravated criminal restraint offense authorizes heightened penalties if the accused is reckless as to the fact the complainant is an on-duty law enforcement officer, public safety employee, or person operating a personal motor vehicle to provide private vehicle for hire services. Such penalties are consistent with enhancements for assault-type,¹⁴¹ robbery¹⁴², and homicide offenses,¹⁴³ and reflect some unique vulnerabilities of such complainants.¹⁴⁴ Requiring a reckless culpable mental state is also consistent with many current statutes that authorize enhanced penalties based on the complainant’s status.¹⁴⁵ Including recklessness as to the complainant being an on-duty law enforcement officer, public safety employee, a vulnerable adult, or person operating a personal motor vehicle to provide private vehicle-for-hire services as an element of aggravated criminal restraint removes a possible gap in current law, and improves the consistency and proportionality of the revised code.

Fourth, the aggravated criminal restraint statute provides new, heightened penalties based on the crime being committed for the purpose of harming the complainant because of his or her status as a law enforcement officer or public safety employee. The current kidnapping statute has no gradations and does not reference a purpose of harming the complainant because of the

¹³⁹ For example, under current law the unarmed kidnapping of a 65 year old taxi cab driver is subject to two penalty enhancements under D.C. Code § 22-3601, and § 22-3751, each of which permits a sentence 1 ½ times the maximum sentence otherwise allowed. Kidnapping ordinarily carries a maximum sentence of 30 years. If these enhancements are both applied, kidnapping a 65 year old taxi driver would be subject to a maximum 60 year sentence, the same as first degree murder. D.C. Code § 22-2104.

¹⁴⁰ D.C. Code § 22-851 (District official or employee while in the course of their duties or on account of those duties, or actions against a family member of a District official or employee); D.C. Code § 22-3611 (minors); D.C. Code § 22-3601 (persons over 65 years of age); D.C. Code §§ 22-3751; 22-3752 (taxicab drivers); and D.C. Code §§ 22-3751.01; 22-3752 (transit operators and Metrorail station managers); and D.C. Code § 22-3602 (members of a citizen patrol).

¹⁴¹ RCC § 22A-1202

¹⁴² RCC § 22A-1201.

¹⁴³ RCC §§ 22A-1101-1102.

¹⁴⁴ For example, on-duty law enforcement and public safety officers performing investigative duties and private vehicle-for-hire services drivers may often enter situations where they are isolated with persons in enclosed places and more susceptible to unwanted interference with their personal movements; vulnerable adults may be targeted due to their limited ability to evade interference with their freedom of movement.

¹⁴⁵ Under current District law it is a defense to the senior citizen complainant enhancement that “the accused knew or reasonably believed the complainant was not 65 years old or older at the time of the offense, or could not have known or determined the age of the complainant because of the manner in which the offense was committed.” D.C. Code § 22-3601(c). Similarly, under the current minor complainant enhancement, it is a defense that “the accused reasonably believed that the complainant was not a minor [person less than 18 years old] at the time of the offense.” D.C. Code § 22-3611(b). The current assault of a law enforcement officer offense requires that the defendant was

status of the complainant, although multiple statutes in the current D.C. Code authorize enhanced penalties for kidnapping committed against certain groups of persons.¹⁴⁶ By contrast, the aggravated criminal restraint statute includes as an element committing criminal restraint for the purpose of harming another person due to that person's status as a law enforcement officer or public safety employee. In practice, this change only affects law enforcement officers and public safety employees who are not District employees, as kidnapping of any District employee is subject to more severe statutory penalties under current District law.¹⁴⁷ Heightened penalties for criminal restraint with the purpose of harming the complainant because of the complainant's status as a law enforcement officer or public safety employee removes a possible gap in current law, and improves the consistency and proportionality of penalties.

Fifth, the aggravated criminal restraint statute incorporates penalty enhancements for using a dangerous weapon or imitation dangerous weapon but requires that the defendant committing the offense by "displaying or touching another person" with the weapon. Current D.C. Code § 22- 4502 provides enhanced penalties for committing kidnapping "while armed" or "having readily available" a dangerous weapon. District case law on D.C. Code § 22-4502 holds that the penalty enhancements are authorized if the accused either had "actual physical possession of [a weapon]";¹⁴⁸ or if the weapon was merely in "close proximity or easily accessible during the commission of the underlying [offense],"¹⁴⁹ provided that the accused also constructively possessed the weapon.¹⁵⁰ There is no requirement under D.C. Code § 22- 4502 that the accused actually used the weapon to commit kidnapping.¹⁵¹ By contrast, the revised aggravated criminal restraint statute requires that the defendant actually displayed a dangerous weapon or imitation dangerous weapon, or touched¹⁵² another person with the weapon. A defendant merely possessing or having a weapon readily available is insufficient to satisfy the element under subsection (a)(2)(C) for aggravated criminal restraint, although such conduct is criminalized elsewhere in current law and the RCC as a separate offense with a lower penalty.¹⁵³ Including use of a dangerous weapon or imitation dangerous weapon within the aggravated

¹⁴⁶ D.C. Code § 22-3602 (providing an enhanced penalty for kidnapping committed against "a member of a citizen patrol ("member") while that member is participating in a citizen patrol, or because of the member's participation in a citizen patrol"); D.C. Code § 22-851 (District official or employee while in the course of their duties or on account of those duties, or actions against a family member of a District official or employee);

¹⁴⁷ D.C. Code § 22-851. Subsection (a)(2)(B)(4) of the RCC aggravated criminal restraint offense provides liability for criminal restraints with the purpose of harming the complainant because of the complainant's status as a District employee.

¹⁴⁸ *Johnson v. United States*, 686 A.2d 200, 205 (D.C. 1996).

¹⁴⁹ *Clyburn v. United States*, 48 A.3d 147, 154 (D.C. 2012) (reversing sentencing enhancement under D.C. Code § 22-4502 when rifle was located in a different room from where defendant committed the underlying offense); *cf. Guishard v. United States*, 669 A.2d 1306, 1310 (D.C. 1995) (affirming sentencing enhancement under D.C. Code § 22-4502 when firearm was in a dresser drawer in the same room as the underlying offense).

¹⁵⁰ *Cox v. United States*, 999 A.2d 63, 69 (D.C. 2010) ("to have a weapon 'readily available,' one must at a minimum have constructive possession of it. To prove constructive possession, the prosecution was required to show that Cox knew the pistol was present in the car, and that he had not merely the ability, but also the intent to exercise dominion or control over it.").

¹⁵¹ *See, Morton v. United States*, 620 A.2d 1338, 1340 (D.C. 1993) (affirming sentencing enhancement under D.C. Code § 22-4502 when firearm was within arm's length, but no evidence that the firearm was ever used to further any crime).

¹⁵² Any type of physical contact with a dangerous weapon would satisfy the touching requirement. For example, if all other offense elements are satisfied, placing a knife or firearm to the complainant's back and telling them to walk to another location may constitute aggravated criminal restraint.

¹⁵³ *See* D.C. Code § 22-4514(b); RCC § 22A-XXXX [To be revised at a future date.]

criminal restraint statute as an element of the offense improves the proportionality of punishment by matching more severe penalties to criminal restraints in which the defendant actually uses a weapon.

One other change to the aggravated criminal restraint offense is clarificatory in nature and is not intended to change current District law. The aggravated criminal restraint offense requires that the defendant “knowingly” displayed or touched another person with a dangerous or imitation weapon. The penalty enhancement under D.C. Code § 22-4502 for committing kidnapping “while armed” or “having readily available” a dangerous weapon does not specify a culpable mental state as to possession of a weapon. However, the DCCA has held that under §22-4502, the defendant must “*knowingly* be in control of the weapon.”¹⁵⁴ Consistent with this case law, the aggravated criminal restraint statute requires that that the defendant “knowingly” displayed or touched another person with a dangerous weapon or imitation weapon. Specifying the culpable mental state as to use of a dangerous weapon clarifies the RCC aggravated criminal restraint offense.

Relation to National Legal Trends. *Codifying an aggravated criminal restraint offense is well supported by national criminal codes, however the use of complainant-specific and weapon-based aggravators is not well supported by national criminal codes.*

Codifying a more serious gradation of criminal restraint is the majority approach across the twenty-nine states that have comprehensively reformed criminal codes influenced by the Model Penal Code (MPC) and have a general part (hereinafter “reformed code jurisdictions”). Nearly all reformed code jurisdictions codify a separate criminal restraint type offense¹⁵⁵, and a slight majority of these recognize more than one grade of the criminal restraint offense.¹⁵⁶ The MPC also codifies more than one grade of criminal restraint. However, of the states that recognize more than one penalty grade, most have followed the MPC’s lead and grade their analogous criminal restraint offenses based on whether the defendant placed the complainant at “risk of serious bodily injury.”¹⁵⁷ Only one reformed code jurisdictions grade their criminal restraint offenses based on the status of the complainant¹⁵⁸, and no reformed code jurisdictions grade criminal restraint based on whether the defendant was armed with a dangerous weapon.

¹⁵⁴ *Robinson v. United States*, 100 A.3d 95, 105 (D.C. 2014) (emphasis original).

¹⁵⁵ In other jurisdictions, the analogous offenses are often labeled as felonious restraint, unlawful restraint, false imprisonment, or unlawful imprisonment.

¹⁵⁶ Ala. Code § 13A-6-41, Ala. Code § 13A-6-42; Ark. Code Ann. § 5-11-103, Ark. Code Ann. § 5-11-104; Colo. Rev. Stat. Ann. § 18-3-303; Conn. Gen. Stat. Ann. § 53a-95, Conn. Gen. Stat. Ann. § 53a-96; Del. Code Ann. tit. 11, § 782, Del. Code Ann. tit. 11, § 781; Haw. Rev. Stat. Ann. § 707-721, Haw. Rev. Stat. Ann. § 707-722; 720 Ill. Comp. Stat. Ann. 5/10-3, 720 Ill. Comp. Stat. Ann. 5/10-3.1; Ind. Code Ann. § 35-42-3-3; Ky. Rev. Stat. Ann. § 509.020, Ky. Rev. Stat. Ann. § 509.030; Me. Rev. Stat. tit. 17-A, § 302; N.D. Cent. Code Ann. § 12.1-18-02, N.D. Cent. Code Ann. § 12.1-18-03; N.H. Rev. Stat. Ann. § 633:2, N.H. Rev. Stat. Ann. § 633:3; N.J. Stat. Ann. § 2C:13-2, N.J. Stat. Ann. § 2C:13-3; N.Y. Penal Law § 135.05; N.Y. Penal Law § 135.10; Ohio Rev. Code Ann. § 2905.02, Ohio Rev. Code Ann. § 2905.03; 18 Pa. Stat. Ann. § 2902, 18 Pa. Stat. Ann. § 2903; Tex. Penal Code Ann. § 20.02.

¹⁵⁷ Ala. Code § 13A-6-41, Ala. Code § 13A-6-42; Ark. Code Ann. § 5-11-103, Ark. Code Ann. § 5-11-104; Conn. Gen. Stat. Ann. § 53a-95, Conn. Gen. Stat. Ann. § 53a-96; Del. Code Ann. tit. 11, § 782, Del. Code Ann. tit. 11, § 781; Haw. Rev. Stat. Ann. § 707-721, Haw. Rev. Stat. Ann. § 707-722; Ky. Rev. Stat. Ann. § 509.020, Ky. Rev. Stat. Ann. § 509.030; N.D. Cent. Code Ann. § 12.1-18-03; N.H. Rev. Stat. Ann. § 633:2, N.H. Rev. Stat. Ann. § 633:3; N.J. Stat. Ann. § 2C:13-2, N.J. Stat. Ann. § 2C:13-3; N.Y. Penal Law § 135.05; N.Y. Penal Law § 135.10; Ohio Rev. Code Ann. § 2905.02, Ohio Rev. Code Ann. § 2905.03; 18 Pa. Stat. Ann. § 2902, 18 Pa. Stat. Ann. § 2903; Tex. Penal Code Ann. § 20.02.

¹⁵⁸ Tex. Penal Code Ann. § 20.02.

However, some state courts have held that using or being armed with a dangerous weapon can create a risk of serious bodily injury¹⁵⁹, which is a widely recognized grading factor.

RCC § 1404. Criminal Restraint

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

Commentary

¹⁵⁹ E.g., *State v. Zubhuza*, 90 A.3d 614, 618 (N.H. 2014) (“In determining whether such a risk exists, the defendant's use or brandishing of a deadly weapon is a highly relevant consideration.”); *Linville v. Com.*, No. 2011-SC-000109-MR, 2012 WL 2362489, at *6 (Ky. June 21, 2012) (holding that at least certain uses of dangerous weapons create risk of serious physical injury); *State v. Ciullo*, 59 A.3d 293, 301 (2013), *aff’d*, 314 Conn. 28, 100 A.3d 779 (Ct. App. 2014) (holding that pointing guns at complainants created a risk of substantial injury).

Explanatory Note. This section establishes the criminal restraint offense for the Revised Criminal Code. This offense criminalizes knowingly interfering with another person’s freedom of movement. The offense is identical to the RCC’s kidnapping offense, except that criminal restraint does not require intent to hold that person for ransom or another specified purpose.¹⁶⁰ Along with the revised kidnapping,¹⁶¹ aggravated kidnapping,¹⁶² and aggravated criminal restraint¹⁶³ offenses, the revised criminal restraint offense replaces the kidnapping offense in the current D.C. Code.

Subsection (a)(1) specifies that criminal restraint requires a person knowingly interfere to a substantial degree with another person’s freedom of movement. The subsection specifies that a “knowingly” culpable mental state applies, which requires that the accused either consciously desired or was practically certain that he or she would interfere substantially with another person’s freedom of movement. Interference with another person’s freedom of movement requires that the other person must be prevented from moving as he or she would have desired absent the defendant’s intervention. Interference with a person’s freedom of liberty can involve either causing a person to remain in a particular location¹⁶⁴ or causing a person to move to another location.¹⁶⁵ Other restrictions on the person’s liberty are not covered.¹⁶⁶ In addition, the interference must be substantial; momentary or trivial¹⁶⁷ interference is insufficient.

Subsection (a)(2) requires that the defendant interfere with another person’s freedom of movement without consent, with consent obtained by causing bodily injury, threat of bodily injury, or deception. “Bodily injury” and “deception” are terms defined under RCC §22A-1001. A criminal restraint premised on deception requires proof that the defendant would have immediately obtained or attempted to obtain consent by causing bodily injury or threatening to cause bodily injury if the deception had failed. Coercing someone to remain in confinement by means not specified in the RCC’s criminal restraint statute, such as threatening to damage property, are not covered by the statute. If the restrained person is under the age of 16 however, the restraint can be accomplished by any means, so long as the person’s parent, person who has assumed the obligations of a parent, or legal guardian does not effectively consent to the restraint or movement.¹⁶⁸ The term “person who has assumed the obligations of a parent” reflects District case law describing persons standing *in loco parentis*.¹⁶⁹ Per the rule of construction under RCC

¹⁶⁰ See RCC §22A-1402.

¹⁶¹ RCC §22A-1402.

¹⁶² RCC §22A-1401.

¹⁶³ RCC §22A-1403.

¹⁶⁴ For example causing someone to remain in a room under threat of force may constitute interfering with that person’s freedom of movement.

¹⁶⁵ Moving another person can include either moving a person against his or her will, such as by tying up and carrying away a person, or by causing the person to move by means of a threat or deception, such as by ordering a person to walk to a particular location under threat of bodily injury.

¹⁶⁶ For example, using force to compel someone to take off and hand over a ring would not constitute kidnapping, but may be criminalized as another offense in the RCC.

¹⁶⁷ Restrictions on the freedom of movement may be trivial even if they are of significant duration. For example, if a person barricades a door to prevent another from leaving a building, but there is an alternate exit that is easily accessible, the interference would not be substantial regardless of how long the door remains barricaded.

¹⁶⁸ For persons under the age of 16, even non-violent or non-deceptive means of interfering with the person’s freedom of movement suffice for criminal restraint. For example, enticing a child to get into a car and remain in the car as it drives away with the truthful promise of candy at the final destination may constitute criminal restraint.

¹⁶⁹ *Martin v. United States*, 452 A.2d 360, 362 (D.C. 1982) (finding that there was no evidence that appellant stood in loco parentis with his 13-year-old cousin because the record reflected “at best . . . that appellant helped on occasion with the basic running of the household,” that disciplinary authority over the cousin had never been

§ 22A-207, the “knowingly” mental state also applies to this element. The defendant must be practically certain the other person does not consent, or that consent was obtained by causing bodily injury, threat of bodily injury, or deception, or in the case of a person under the age of 16, that the person’s parent, legal guardian, or person who has assumed the obligations of a parent does not effectively consent to the interference.

Subsection (b) specifies relevant penalties for the offense.

Subsection (c) provides a definition for the term “relative” and cross-references applicable definitions located elsewhere in the RCC.

Subsection (d) provides a defense to criminal restraint prosecutions under subsection (a)(2)(D) if the defendant is a relative of the restrained person. The defense is not available in criminal restraint prosecutions premised on subsections (a)(2)(A)-(C)¹⁷⁰, or if the defendant is not a relative of the restrained person.¹⁷¹

Subsection (e) provides that a person may not be sentenced for criminal restraint if the interference with the other person’s freedom of movement was incidental to the commission of any other offense. Interference is incidental to another offense when the defendant’s primary purpose in interfering with the other person’s freedom of movement was to commit the other offense.¹⁷²

Relation to Current District Law. *The revised criminal restraint offense changes current District law in four main ways that improve the proportionality of penalties, and clearly describe all elements that must be proven, including culpable mental states.*

First, the RCC criminal restraint offense codifies as a separate offense interference with a person’s freedom of movement when the motive of the perpetrator is not ransom, the infliction of bodily injury, or other particularly harmful or dangerous acts. The current kidnapping statute

“specifically delegated” to appellant, and appellant had not “assumed any obligations (such as financial support) that would be ‘associated with one standing as a natural parent to a child.’”) (emphasis in original) (quoting *Fuller v. Fuller*, 135 U.S. App. D.C. 353 (1969)). The court in *Martin* stated that “in loco parentis refers to a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation. . . . It embodies the ideas of both assuming the parental status and discharging the parental duties.” *Martin*, 452 A.2d at 362 (internal citations omitted). The court noted that in loco parentis involves “more than a duty to aid or assist . . . It arises only when one is willing to assume all the obligations and to receive all the benefits associated with one standing as a natural parent to a child.” *Id.* (emphasis in original) (internal citations omitted). *See also, Byrd v. United States*, 705 A.2d 629, 632 (D.C. 1997) (stating that “a person who stands in the place of a biological parent at the time of a kidnapping is exempt from prosecution pursuant to [the kidnapping statute].”).

¹⁷⁰ For example, if a defendant interferes with another person’s freedom of movement by threatening to cause bodily injury, it does not matter if the defendant is related to the restrained person.

¹⁷¹ Conduct constituting criminal restraint of a relative may still be prosecuted under the parental kidnapping statute under D.C. Code § 16-1022.

¹⁷² This provision is intended to re-instate DCCA case law prior to *Parker v. United States*, 692 A.2d 913 (D.C. 1997). Prior to *Parker*, District courts employed a fact-based inquiry to determine whether convictions for kidnapping and other offenses that arise from a single act or course of conduct should merge. In *Parker*, the DCCA held that instead of a fact-based inquiry, courts should only use a *Blockburger* elements test to determine if convictions for kidnapping and separate offenses should merge. The restraint need not be necessarily associated with commission of the other offense. For example, a person who commits robbery by forcing a person to walk into an adjacent room to locate valuables would not be guilty of criminal restraint because the movement was incidental to the robbery. However, a person who restrains another for a full day in order to facilitate commission of a robbery may still be convicted of a criminal restraint because the duration of the restraint far exceeded what would normally be associated with a robbery. *See, e.g. Sinclair v. United States*, 388 A.2d 1201 (D.C. 1978) (kidnapping was not incidental to robbery when the defendant held a person at gunpoint in a car and drove 25 blocks away).

requires that the defendant hold a person “for ransom, reward, *or otherwise*[.]”¹⁷³ The DCCA has interpreted the “or otherwise” language broadly and held that “[t]he motive behind the kidnapping is unimportant, so long as the act was done with the expectation of benefit to the transgressor.”¹⁷⁴ By contrast, the RCC divides the current kidnapping offense into two primary offenses, with criminal restraint providing liability for interference with another person’s freedom of movement while the revised kidnapping requires an added wrongful intent that makes the restraint especially dangerous, harmful, or terrifying. Codifying a new criminal restraint offense improves the proportionality of the RCC by separately labeling and penalizing less harmful and dangerous forms of interference with another person’s freedom of movement.¹⁷⁵

Second, the RCC criminal restraint statute requires that the defendant interfere with another person’s freedom of movement “to a substantial degree.” The current kidnapping statute does not explicitly include any substantiality element, and the D.C. Court of Appeals (DCCA) has never discussed in a published opinion whether momentary or trivial interference with a person’s freedom of movement suffices under the current kidnapping statute.¹⁷⁶ By contrast, the RCC criminal restraint statute requires that the defendant interfere with another person’s freedom of movement to a substantial degree. This excludes momentary or trivial interference with a person’s freedom of movement. The precise effect on current law is somewhat unclear, as there is no case law on point. Requiring that the defendant interfere with another person’s freedom of movement “to a substantial degree” improves the proportionality of the RCC by excluding cases that only involve trivial or momentary interference.¹⁷⁷

Third, the criminal restraint offense provides a defense for prosecution under subsection (a)(2)(D) if the defendant is a “relative” of a complainant who is under the age of 16 or a person assigned a legal guardian. The current kidnapping statute provides an exception to liability if the victim is a minor, and the defendant is the victim’s parent. However, the current statute does not specify any further conditions for the exception, and it is unclear whether the current statute’s parental exception applies in all kidnapping cases or is inapplicable if the parent uses force or threats to restrain the child. Case law has not resolved this ambiguity.¹⁷⁸ By contrast, the RCC

¹⁷³ D.C. Code § 22-2001.

¹⁷⁴ *Walker v. United States*, 617 A.2d 525, 527 (D.C. 1992) (quoting *United States v. Wolford*, 144 U.S.App.D.C. 1, 5-6, 444 F.2d 876, 880-81 (1971) (internal quotations omitted). For example, restraining another person in order to enact revenge, or out of a desire for companionship could sustain a kidnapping conviction under current law. See *Walker*, 617 A.2d at 527.

¹⁷⁵ For example, a person who in the heat of the moment blocks a door to prevent his significant other to leave in the midst of an argument may be guilty of kidnapping under current law, and subject to the same penalty as a person who, after substantial planning, forcibly seizes a person, transports them to another location, and holds them for ransom on fear of death. Under the RCC, these two types of conduct would be penalized differently, as a criminal restraint and kidnapping.

¹⁷⁶ DCCA case law discussing whether kidnapping should merge with other offenses has suggested that relatively brief interference with another person’s freedom of movement can constitute kidnapping. *E.g.*, *Sinclair v. United States*, 388 A.2d 101, 1204 (D.C. 1978) (noting that “victims of [rape or robbery] are detained against their will while the criminal is accomplishing his objective”). This case law implies that even the brief detention associated with an ordinary street robbery is sufficient for kidnapping. However, the DCCA has never specifically decided whether on its own, such a brief detention would satisfy the elements of kidnapping.

¹⁷⁷ If a defendant intended to interfere with a person’s freedom of movement to a substantial degree but failed to do so and was only able to interfere in an insubstantial manner, attempt liability may still be applicable depending on the facts of the case.

¹⁷⁸ In *Byrd v. United States*, 705 A.2d 629, 633 (D.C. 1997), the DCCA held that a person acting *in loco parentis* may not rely on the parental exception if “the defendant has engaged in separate felonious conduct during the kidnapping which exposes the child to a serious risk of death or bodily injury.” However, the DCCA explicitly

criminal restraint statute extends a defense to relatives who lack the effective consent of the complainant's parent, the person who has assumed the obligations of a parent, or the legal guardian when the complainant is under the age of 16, or has been assigned a legal guardian. The RCC also defines "relative" to include various family members. The revised offense's subsection (d) recognizes the diminished culpability and risk to the complainant in cases where a relative acts without the freely given consent of the parent, person who has assumed the obligations of a parent, or legal guardian, and no force or threats were used.¹⁷⁹ The District's parental kidnapping statute¹⁸⁰ may still provide liability in such conduct by a relative. If the defendant is not a relative of the victim or is a relative who interfered with the minor or ward's freedom of movement without consent or by causing or threatening to cause bodily injury, the defense is not available. Changing the parental exception to include a broader array of relatives but limiting the defense to cases in which the defendant acted with consent of the child and did not cause bodily injury or threaten to cause bodily injury, improves the proportionality of the revised offenses.

Fourth, the RCC criminal restraint statute bars sentencing for the crime if the interference with a person's freedom of movement was incidental to the commission of any other offense.¹⁸¹ Under current DCCA case law a defendant may be convicted of both kidnapping and another offense that arise from the same act or course of conduct, as long as kidnapping and the other offense each include "at least one element which the other one does not."¹⁸² By contrast, the RCC criminal restraint statute reinstates the fact-based test applied by the DCCA prior to *Parker v. United States*,¹⁸³ which required courts to make a determination in each case as to whether the interference with the other person's freedom of movement was merely incidental to another offense.¹⁸⁴ Where, as is common,¹⁸⁵ such interference with a person's freedom of movement is incidental to another offense,¹⁸⁶ the authorized punishment for the other offense is sufficient. The RCC criminal restraint sentencing provision improves the proportionality of the offense.

declined to decide whether a "whether a biological parent may similarly forfeit the protection of the exception." *Id.* at 634 n. 7.

¹⁷⁹ See, *Id.* at 633 (noting that the current kidnapping statute was with the intent that "a parent who kidnapped a child, however misguidedly, out of affection and disagreement over custody should not be prosecuted for that act alone").

¹⁸⁰ D.C. Code § 16-1022.

¹⁸¹ By barring sentences for kidnapping, the revised statute allows for the possibility that convictions for kidnapping and the other offense may be entered for purposes of appeal. If the conviction for the other offense is reversed on appeal, the appellate court may order a lower court to sentence the defendant for the surviving kidnapping conviction.

¹⁸² *Malloy v. United States*, 797 A.2d 687, 691 (D.C. 2002)

¹⁸³ 692 A.2d 913 (D.C. 1997). In *Parker*, the DCCA applied a new test for how to determine, in the absence of legislative intent, whether charged offenses should merge. The *Parker* ruling applied the new "elements" test the DCCA first adopted in *Byrd v. United States*, 598 A.2d 386 (D.C.1991) (en banc) because there was no legislative intent discernible as to whether kidnapping should merge with murder.

¹⁸⁴ E.g., *West v. United States*, 599 A.2d 788, 793 (D.C. 1991); *Vines v. United States*, 540 A.2d 1107, 1109 (D.C. 1988); *Robinson v. United States*, 388 A.2d 1210, 1211–12 (D.C. 1978).

¹⁸⁵ Many offenses against persons commonly involve some type of significant, non-consensual interference with another person's freedom of movement. For example, victims of robberies, assaults, sexual assaults, and homicides are frequently subjected to threats or physical restraint that prevent them from fleeing. Under current District law, such offenses against persons typically would provide the basis for a kidnapping charge. In practice, however, kidnapping charges are not typically brought in cases with such offenses against persons.

¹⁸⁶ E.g., *Robinson*, 388 A.2d at 1212–13 (holding that when defendant dragged a person 63 paces over the course of a few moments in order to commit a sexual assault, the "seizure and asportation was clearly incidental to the crime of assault with intent to rape" and that the conduct should not constitute two separate crimes.).

Beyond these four changes to current District law, five other aspects of the revised criminal restraint offense may constitute substantive changes to current District law.

First, the RCC criminal restraint statute provides that a person is not liable for interference with another's freedom of movement unless they: did not consent; their consent was obtained by causing bodily injury or the threat of causing bodily injury; or their consent was obtained by deception where the defendant would have been willing to resort to force or threat of force should the deception fail. The current kidnapping statute is silent as to whether or in what way the interference with the complainant's freedom of movement must be without consent. The current statute just broadly states that a person commits kidnapping by "seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, or carrying away any individual",¹⁸⁷ but none of these terms are statutorily defined. The DCCA has generally recognized that kidnapping requires an "involuntary seizure,"¹⁸⁸ which includes forcible seizures¹⁸⁹, or restraining a person by threat of force.¹⁹⁰ Current District practice also recognizes that a person can commit kidnapping by "seiz[ing], confin[ing], abduct[ing], or carr[ying] away [the complainant] against his/her will"¹⁹¹ The plain text of the current statute also suggests that a person can commit kidnapping without resorting to force or threats, by "inveigling," or "decoying" another person, and District practice has recognized that the current statutory language in part targets deceptive behavior.¹⁹² However, the DCCA has never discussed in a published opinion whether a deception that causes a person to change how they otherwise would exercise their freedom of movement can alone constitute kidnapping, absent proof that the defendant would have resorted to force should the deception fail.¹⁹³ Federal courts interpreting an analogous federal kidnapping statute¹⁹⁴ are split as to whether deception alone can constitute

¹⁸⁷ The current statute states that a person can commit kidnapping by "seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, or carrying away any individual by any means whatsoever[.]" D.C. Code § 22-2001.

¹⁸⁸ *Walker*, 617 A.2d. at 527 (noting that "involuntary seizure is the very essence of the crime of kidnapping"); *Davis v. United States*, 613 A.2d 906, 912 (D.C. 1992) ("To prove a kidnapping, the government must show that the defendant confined the complainant with specific intent to detain the complainant for "ransom or reward or otherwise" and that such detention was involuntary or by use of coercion[.]")

¹⁸⁹ *E.g.*, *Hughes v. United States*, 150 A.3d 289, 306 (D.C. 2016) (holding that evidence showing defendant grabbed victim by the hair and pushing her into a changing room was sufficient to prove that she had been seized and detained involuntarily).

¹⁹⁰ *E.g.*, *Battle v. United States*, 515 A.2d 1120 (D.C. 1986) (defendant committed kidnapping by displaying a gun, got into complainant's car, and drove the car away to a different location where the complainant would be held).

¹⁹¹ D.C. Crim. Jur. Instr. § 4.303 Kidnapping.

¹⁹² D.C. Crim. Jur. Instr. § 4.303 Kidnapping ("The Committee has omitted these forms of kidnapping in the interest of simplification. But in cases where inveigling, enticing or decoying are involved, the Committee suggests the following in place of the first element: "That the defendant inveigled, enticed, decoyed [choose the appropriate word] the complainant." The court should then read the second element. It should also provide an appropriate definition of the words "inveigle" or "decoy" as follows: "To 'inveigle' means to lure or entice or lead astray a person by false representations or promises or other deceitful means." "The word 'decoy' means enticement or luring a person by some trick, fraud or temptation.").

¹⁹³ *Miller v. United States*, 138 F.2d 258, 260 (8th Cir.1943) (defendant initially deceived complainant by lying about taking her to see her dying grandfather, then enslaved complainant and kept her in servitude by using beatings and death threats).

¹⁹⁴ *United States v. Wolford*, 444 F.2d 876, 879-80 (D.C. Cir. 1971) ("For all practical purposes, the conduct prohibited by section 2101 is identical to that proscribed by the Federal Kidnaping Act, as presently worded, 18 U.S.C. 1201 (1964),⁶ with the exception of the requirement of the federal statute that the complainant be transported in interstate or foreign commerce. For this reason, and because both statutes were enacted by Congress, decisions

kidnapping.¹⁹⁵ The RCC’s criminal restraint statute provides that criminal restraint requires a lack of consent, consent obtained by causing bodily injury or the threat of causing bodily injury, or in cases involve consent obtained by deception, requires that the defendant would have immediately resorted to force or threats should the deception fail.¹⁹⁶ A factfinder must evaluate whether a person who uses deception to lure a complainant to another location, but who is stopped en route by a third party, possessed the intent to use force or threats should the third party not have intervened.¹⁹⁷ Without proof of such additional intent, the person would not be guilty of a criminal restraint. The revised language improves the clarity and proportionality¹⁹⁸ of the offense.

Second, the RCC’s criminal restraint statute omits the word “entices.” The current kidnapping statute states that a person commits kidnapping by “enticing . . . any individual . . . with intent to hold or detain such individual for ransom, reward, or otherwise[.]”¹⁹⁹ Under a plain language reading, the current kidnapping statute provides liability for merely enticing a person with intent to hold or detain that person for some personal benefit, even if the person was never actually held. However, the DCCA has never discussed in a published opinion whether such conduct would actually constitute kidnapping, and such an interpretation would run counter to case law requiring the kidnapping to be “involuntary” in nature.²⁰⁰ The RCC’s criminal restraint statute resolves this ambiguity by providing that only certain threats—threats of bodily injury—or deceptions may suffice for liability as criminal restraint.²⁰¹ A person cannot criminal restraint merely by offering some reward, absent the use of force or threats.²⁰² These limitations improve the clarity and proportionality of the offense, by more clearly defining the scope of the

construing the meaning and application of the Federal Kidnaping Act may be resorted to as an aid in determining the meaning of the similar language employed in the District statute.); D.C. Crim. Jur. Instr. § (noting that the District’s kidnapping statute is “intended to cover the same acts as the federal kidnapping statute 18 U.S.C. § 1201 (a)(1)”).

¹⁹⁵ *United States v. Corbett*, 750 F.3d 245, 246 (2d Cir. 2014) (“Other circuits differ as to whether a defendant who first “takes” control of his victim by “decoy” or trick must intend to back up his pretense with physical or psychological force in order to “hold” the unwilling victim under the statute. Compare *United States v. Boone*, 959 F.2d 1550, 1555 & n. 5 (11th Cir.1992) (requiring that the defendant “ha[ve] the willingness and intent to use physical or psychological force to complete the kidnapping in the event that his deception fail[s]”), with *United States v. Hoog*, 504 F.2d 45, 50–51 (8th Cir.1974) (finding the evidence to be sufficient where the defendant promised the victim a ride and then kept her in his car by inventing an emergency detour.”).

¹⁹⁶ Deception can fail either by the complainant realizing that he or she has been deceived, or by a third party intervening on behalf of the complainant.

¹⁹⁷ The defendant’s motive for deceiving the other person, whether the defendant was armed, or an actual attempt to use force or threats may all be relevant to determinations of the defendant’s willingness to resort to force or threats should the deception fail.

¹⁹⁸ Absent the RCC specification that consent by deception must be accompanied by an intent to use bodily injury or threat of bodily injury if necessary, a broad range of otherwise accepted, legal conduct may fall within the scope of the RCC criminal restraint and current kidnapping statute. For example, if a defendant lures another person to a location, and convinces the person to remain in that location by false promise of employment, and the defendant was willing to resort to force or threats should the other person realize that there is no actual employment to be had, the defendant could be convicted of criminal restraint.

¹⁹⁹ D.C. Code § 22-2001.

²⁰⁰ *C.f. Walker v. United States*, 617 A.2d 525, 527 (D.C. 1992) (noting that “involuntary seizure is the very essence of the crime of kidnapping”).

²⁰¹ For example, if a person is coerced into staying in a particular location under threat of damage to that person’s property, no kidnapping has occurred.

²⁰² However, a person can commit criminal restraint by initially enticing another person with offer of some benefit as a means of luring the other person to move to or remain in a particular location as long as the defendant also uses force, threats.

offense, and only including conduct dangerous enough to warrant the penalties under the criminal restraint statute.²⁰³

Third, the RCC criminal restraint statute sets the age of consent for interference with freedom of movement at 16 years. The current kidnapping statute does not specify whether a person commits kidnapping by restraining or moving a minor with the minor's consent, but without the minor's parent or legal guardian's consent. The DCCA has never determined whether a person can commit kidnapping by taking a child with the child's consent, but without the consent of a parent or legal guardian.²⁰⁴ However, the RCC criminal restraint statute specifies that a person may commit criminal restraint by interfering with the freedom of movement of a person under the age of 16, if a parent, legal guardian, or person who has assumed the obligations of a parent has not freely consented to the interference, regardless of whether the person under 16 has provided consent.²⁰⁵ Conversely, the RCC criminal restraint statute provides that a 16 or 17 year old may freely consent to an interference with their freedom of movement notwithstanding the lack of consent by his or her parents.²⁰⁶ Specifying that a person may commit criminal restraint of a person under the age of 16, if the person's parent, person who has assumed the obligations of a parent, or legal guardian does not freely consent clarifies the law in the RCC.

Fourth, the RCC criminal restraint statute specifies that the defendant must have "knowingly" interfered with another person's freedom of movement. The current kidnapping statute references as one means of committing the offense that the defendant acted "with the intent to hold or detain",²⁰⁷ but it is not clear whether this culpable mental state applies to other elements of the offense, and the phrase "with the intent" is not defined in the statute. In one case the DCCA stated that the current kidnapping statute requires that the defendant had "specific intent to detain the complainant"²⁰⁸ although it is unclear whether the DCCA in that case was referring only to the defendant's motive rather than their awareness of the objective elements of the offense. Current District practice appears to treat the kidnapping as a "general

²⁰³ For instance, a salesman who entices a customer into a store with a promise of free samples but who does so with intent to get the person to be delayed long enough to purchase items for sale would not be guilty of a criminal restraint.

²⁰⁴ *But see, Blackledge v. United States*, 871 A.2d 1193, 1197 (D.C. 2005) (holding that convictions for kidnapping and enticing a minor do not merge, noting that "the kidnapping statute requires . . . that the complainant was seized involuntarily through the defendant's use of mental or physical coercion; however, consent is never a valid defense to child enticement, and therefore the government is not required to show that the child was taken involuntarily."). This language suggests that kidnapping requires, even in the case of minors, that the defendant seize another person "involuntarily", and that kidnapping does not criminalize moving or confining a minor by means of enticement.

²⁰⁵ For example, a person who lures a child with candy may still be guilty of kidnapping even if the child genuinely wanted to go away with the defendant, if the child's parents did not provide consent.

²⁰⁶ For example, an eighteen year old ("A") would not be guilty of criminal restraint for offering and giving a sixteen year old ("B") a ride to a party when A knows that the parents of the B said that B was to stay at home, and A did not use bodily injury, threat of bodily injury, or deception as part of taking B to the party.

²⁰⁷ See D.C. Code § 22-2001 ("...holding or detaining, or with the intent to hold or detain, such individual for ransom or reward or otherwise...").

²⁰⁸ *Davis v. United States*, 613 A.2d 906, 912 (D.C. 1992) ("To prove a kidnapping, the government must show that the defendant confined the complainant with specific intent to detain the complainant for 'ransom or reward or otherwise' and that such detention was involuntary or by use of coercion; the detention may be for any purpose that the defendant believes might benefit him.").

intent” offense.²⁰⁹ The revised criminal restraint statute specifies that a “knowingly” culpable mental state applies to the element of interfering with another person’s freedom of movement. Applying a knowledge requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.²¹⁰ Specifying a culpable mental state for the offense improves the clarity of the RCC and is consistent with requirements for most other offenses.

Fifth, the revised statute does not separately criminalize a conspiracy to commit criminal restraint. The District’s current kidnapping statute specifically provides that any person who conspires to commit kidnapping “shall be deemed to have violated the provisions of this section.”²¹¹ The current kidnapping statute’s reference to a conspiracy, however, does not specify what culpable mental states, if any, apply to the conspiracy. By contrast, under the RCC criminal restraint statute, conspiracy to commit criminal restraint is subject to the RCC’s general conspiracy statute. The RCC’s general conspiracy statute details the culpable mental state and other requirements for proof of a conspiracy in a manner broadly applicable to all offenses. To the extent that the RCC’s general conspiracy provision differs from the law on conspiracy as applied to the current kidnapping statute, relying on the RCC’s general conspiracy provision may constitute a change in current law.²¹² This change improves the clarity and consistency of the revised offense.

One other change to the revised statute is clarificatory in nature and is not intended to substantively change District law.

The RCC criminal restraint statute does not contain special provisions regarding jurisdiction. The current kidnapping statute states that “[t]his section shall be held to have been violated if the seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia.”²¹³ This language apparently is intended to ensure that District courts have jurisdiction over kidnappings that do not occur entirely within the District of Columbia. However, it is unclear whether this language changes the scope of jurisdiction that a District court would otherwise have over kidnapping cases. The DCCA has generally held that District courts have jurisdiction over alleged offenses if “one of several constituent elements to the complete offense” occurs within the District, “even though the remaining elements occurred outside of the District.”²¹⁴ Consequently, although the DCCA has not applied this rule to kidnapping cases, it seems that

²⁰⁹ D.C. Crim. Jur. Instr. § 4.303 Kidnapping requires that the accused acted “voluntarily and on purpose, and not by mistake or accident,” which accords with the jury instructions treatment of “general intent,” not “specific intent” offenses. See Redbook § 3.100 Defendant’s State of Mind.

²¹⁰ See *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

²¹¹ D.C. Code § 22-2001. “If 2 or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and 1 or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.”

²¹² For discussion on the RCC conspiracy statute’s possible changes to current District law, see First Draft of Report #12, Definition of Criminal Conspiracy.

²¹³ D.C. Code § 22-2001.

²¹⁴ *United States v. Baish*, 460 A.2d 38, 40–41 (D.C. 1983), abrogated on other grounds by *Carrell v. United States*, 80 A.3d 163 (D.C. 2013).

District courts would have jurisdiction over any case in which a person was seized or held within the District, regardless of whether the person was initially seized outside of the District, or if the person were seized within the District and transported out of the District.²¹⁵ The RCC criminal restraint statute eliminates jurisdiction language specific to kidnapping and criminal restraint. In addition to general case law providing authority for offenses if “one of several constituent elements to the complete offense” occurs within the District,”²¹⁶ RCC § 22A-303 specifically provides jurisdiction for conspiracies formed within the District when the object of the conspiracy is engage in conduct outside of the District if the conduct would constitute a crime under D.C. Code.²¹⁷ District courts would therefore have jurisdiction over conspiracies to commit criminal restraint outside of the District. Omitting special jurisdiction language from the criminal restraint statute improves the law’s clarity by omitting unnecessary language and making the offense more consistent with other offenses.

Relation to National Legal Trends. Changing current District law by including a criminal restraint is supported by national criminal codes.

First, including a separate criminal restraint offense is consistent with the approach across the twenty-nine states that have comprehensively reformed criminal codes influenced by the Model Penal Code (MPC) and have a general part²¹⁸ (hereinafter “reformed code jurisdictions”). The Model Penal Code, as well as twenty-seven of the twenty-nine reformed code jurisdictions include a separate criminal restraint offense that is subject to less severe penalties than kidnapping.²¹⁹

Requiring that the restraint be without consent, or with consent obtained by causing bodily injury, threat to cause bodily injury, or deception has limited support amongst other states’ criminal codes. A minority of reformed jurisdictions’ analogous criminal restraint offenses explicitly require lack of consent, use of force, threats, or any means if the complainant is under the age of 16.²²⁰ However, CCRC has staff has not comprehensively researched case

²¹⁵ For example, a person who attempts to lure a person in another jurisdiction into the District for purposes of kidnapping that person may be guilty of attempted kidnapping, assuming that the defendant’s conduct satisfied the dangerous proximity test.

²¹⁶ *Baish*, 460 A.2d at 40–41.

²¹⁷ RCC § 22A-303 (c).

²¹⁸ 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). In addition, Tennessee reformed its criminal code after the publication of this article.

²¹⁹ Ala. Code § 13A-6-41, Ala. Code § 13A-6-42; Ariz. Rev. Stat. Ann. § 13-1303; Ark. Code Ann. § 5-11-104, Ark. Code Ann. § 5-11-103; Colo. Rev. Stat. Ann. § 18-3-303; Conn. Gen. Stat. Ann. § 53a-95, Conn. Gen. Stat. Ann. § 53a-96; Del. Code Ann. tit. 11, § 782, Del. Code Ann. tit. 11, § 781; Haw. Rev. Stat. Ann. § 707-721, Haw. Rev. Stat. Ann. § 707-722; 720 Ill. Comp. Stat. Ann. 5/10-3, 720 Ill. Comp. Stat. Ann. 5/10-3.1; Ind. Code Ann. § 35-42-3-3; Kan. Stat. Ann. § 21-5411; Ky. Rev. Stat. Ann. § 509.020, Ky. Rev. Stat. Ann. § 509.030; Me. Rev. Stat. tit. 17-A, § 302; Minn. Stat. Ann. § 609.255; Mo. Ann. Stat. § 565.130 (though labeled third degree kidnapping); Mont. Code Ann. § 45-5-301; N.H. Rev. Stat. Ann. § 633:2, N.H. Rev. Stat. Ann. § 633:3; N.J. Stat. Ann. § 2C:13-2, N.J. Stat. Ann. § 2C:13-3; N.Y. Penal Law § 135.05, N.Y. Penal Law § 135.10; N.D. Cent. Code Ann. § 12.1-18-02, N.D. Cent. Code Ann. § 12.1-18-03; Ohio Rev. Code Ann. § 2905.02, Ohio Rev. Code Ann. § 2905.03; 18 Pa. Stat. Ann. § 2902, 18 Pa. Stat. Ann. § 2903; S.D. Codified Laws § 22-19-17; Tenn. Code Ann. § 39-13-302; Tex. Penal Code Ann. § 20.02; Wash. Rev. Code Ann. § 9A.40.040; Wis. Stat. Ann. § 940.30.

²²⁰ Ala. Code § 13A-6-40; Ark. Code Ann. § 5-11-101; Ariz. Rev. Stat. Ann. § 13-1301; Conn. Gen. Stat. Ann. § 53a-91; Del. Code Ann. tit. 11, § 786; 720 Ill. Comp. Stat. Ann. 5/10-1 (Illinois’ kidnapping offense is analogous to

law in other jurisdictions to determine whether courts have interpreted analogous criminal restraint offenses to require lack of consent, use of force, threat of force, deception, or any other means when the complainant is a minor.

Second, requiring that interference must be “to a substantial degree” is supported by other criminal codes. A majority of reformed code jurisdictions’ analogous criminal restraint offenses require that the defendant interfere with another person’s freedom of movement to a substantial degree.²²¹

Third, recognizing a defense if the defendant was a relative of the complainant is not consistent with most criminal codes. A minority of reformed code jurisdiction includes a relative defense to kidnapping or criminal restraint-type offenses.²²² The RCC’s definition of “relative” differs from most reformed jurisdictions that statutorily recognize a relative defense. A slight majority of these jurisdictions define “relative” to include any “ancestor.”²²³

Fourth, barring sentences for criminal restraint if the interference with the other person’s freedom of movement was incidental to the commission of another criminal offense is consistent with reformed criminal codes. A majority of reformed code jurisdictions either by statute²²⁴ or case law²²⁵ bar sentences for both kidnapping and a separate offense if the kidnapping was incidental to another offense. However, CCRC staff has not researched whether the same rule specifically applies to sentencing for the lesser criminal restraint-type offenses that are incidental to other offenses.

the RCC’s criminal restraint offense); Ky. Rev. Stat. Ann. § 509.010; N.D. Cent. Code Ann. § 12.1-18-04; Tenn. Code Ann. § 39-13-301; Tex. Penal Code Ann. § 20.01; Wash. Rev. Code Ann. § 9A.40.010.

²²¹ Alaska Stat. Ann. § 11.41.370; Ala. Code § 13A-6-40; Ark. Code Ann. § 5-11-101; Ariz. Rev. Stat. Ann. § 13-1301; Conn. Gen. Stat. Ann. § 53a-91; Del. Code Ann. tit. 11, § 786; Haw. Rev. Stat. Ann. § 707-700; Ind. Code Ann. § 35-42-3-1; Kan. Stat. Ann. § 21-5411; Ky. Rev. Stat. Ann. § 509.010; Me. Rev. Stat. tit. 17-A, § 301; Mo. Ann. Stat. § 565.110, Mo. Ann. Stat. § 565.120, Mo. Ann. Stat. § 565.130; Mont. Code Ann. § 45-5-301; N.D. Cent. Code Ann. § 12.1-18-04; N.J. Stat. Ann. § 2C:13-3; Or. Rev. Stat. Ann. § 163.225; S.D. Codified Laws § 22-19-1, S.D. Codified Laws § 22-19-17; Tenn. Code Ann. § 39-13-302; Tex. Penal Code Ann. § 20.01; Wash. Rev. Code Ann. § 9A.40.010.

²²² Alaska Stat. Ann. § 11.41.300; Ala. Code § 13A-6-44; Ariz. Rev. Stat. Ann. § 13-1303; N.Y. Penal Law § 135.15; Or. Rev. Stat. Ann. § 163.225; 18 Pa. Stat. Ann. § 2902; Tex. Penal Code Ann. § 20.02; Wash. Rev. Code Ann. § 9A.40.030.

²²³ Alaska Stat. Ann. § 11.41.370; Ala. Code § 13A-6-40; Ariz. Rev. Stat. Ann. § 13-1301; Or. Rev. Stat. Ann. § 163.215; Tex. Penal Code Ann. § 20.01; Wash. Rev. Code Ann. § 9A.40.010.

²²⁴ Ky. Rev. Stat. Ann. § 509.050

²²⁵ *Hurd v. State*, 22 P.3d 12, 18 (Alaska Ct. App. 2001); *Summerlin v. State*, 756 S.W.2d 908, 910 (Ark. 1988); *Apodaca v. People*, 712 P.2d 467, 475 (Colo. 1985); *Weber v. State*, 547 A.2d 948, 958 (Del. 1988); *State v. Deguair*, 384 P.3d 893, 895 (Haw. 2016); *People v. Smith*, 414 N.E.2d 1117, 1121 (Ill. App. Ct. 1980); *State v. Buggs*, 547 P.2d 720, 730–31 (Kan. 1976); *State v. Taylor*, 661 A.2d 665, 667–68 (Me. 1995); *State v. Welch*, 675 N.W.2d 615, 620 (Minn. 2004); *State v. Williams*, 860 S.W.2d 364, 366 (Mo. Ct. App. 1993); *State v. Casanova*, 63 A.3d 169, 172 (N.H. 2013); *State v. Masino*, 466 A.2d 955, 960 (N.J. 1983); *People v. Miles*, 245 N.E.2d 688, 695 (N.Y. 1969); *State v. Logan*, 397 N.E.2d 1345, 1351–52 (Ohio 1979); *State v. Garcia*, 605 P.2d 671, 676–77 (Or. 1980); *Com. v. Hook*, 512 A.2d 718, 720 (Pa. 1986); *State v. Lykken*, 484 N.W.2d 869, 876 (S.D. 1992); *State v. White*, 362 S.W.3d 559, 581 (Tenn. 2012).