



First Draft of Report #69 -
Cumulative Update to Class Imprisonment Terms and Classification of RCC
Offenses

SUBMITTED FOR ADVISORY GROUP REVIEW
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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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.

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 #69 - Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses, is February 15, 2021 (one month from the date of issue). Oral comments and written comments received after February 15, 2021 may not be reflected in the final recommendation. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

This report presents for Advisory Group comment several distinct items concerning penalties for the RCC, including:

- 1. Updated statutory text and commentary for RCC 22E-603;**
- 2. Updated classification recommendations: Appendix E. Table of RCC Specific Offense Classifications;**
- 3. Updated statutory text and commentary for subsection (e) penalty provisions of RCC § 22E-1201, Robbery;**
- 4. New statutory text and commentary for revision of D.C. Code 24-403.01 provisions regarding supervised release;**
- 5. New statutory text and commentary providing deferred disposition for Classes C, D, and E;**
- 6. Update of revisions to D.C. Code § 16-705. Jury trial; trial by court.**

1. Updated statutory text and commentary for RCC 22E-603.

Updated statutory text is as follows, with changes in red ink and deleted text in strikethrough.

RCC § 22E-603. Authorized Terms of Imprisonment.

- (a) *Authorized terms of imprisonment.* Unless otherwise expressly specified by statute, the maximum term of imprisonment authorized for an offense is:
- (1) For a Class 1 felony, ~~60~~ 45 years;
 - (2) For a Class 2 felony, ~~48~~ 40 years;
 - (3) For a Class 3 felony, ~~36~~ 30 years;
 - (4) For a Class 4 felony, 24 years;
 - (5) For a Class 5 felony, 18 years;
 - (6) For a Class 6 felony, 12 years;
 - (7) For a Class 7 felony, 8 years;
 - (8) For a Class 8 felony, ~~5~~ 4 years;
 - (9) For a Class 9 felony, ~~3~~ 2 years;
 - (10) For a Class A misdemeanor, 1 year;
 - (11) For a Class B misdemeanor, 180 days;
 - (12) For a Class C misdemeanor, ~~90~~ 60 days;
 - (13) For a Class D misdemeanor, ~~30~~ 10 days; and
 - (14) For a Class E misdemeanor, no imprisonment.
- (b) *Definitions.* The terms “felony” and “misdemeanor” have the meanings specified in RCC § 22E-701.

COMMENTARY

Explanatory Note. Subsection (a) provides specific, standardized imprisonment penalties for offenses under Title 22E. Subsection (a) designates for each class a maximum term of imprisonment beyond which a court may not sentence a defendant to serve. Subsection (b) cross-references definitions of “felony” and “misdemeanor” in RCC § 22E-701.

Relation to Current District Law. RCC § 22E-603(a) codifies entirely new law. As noted in the Commentary to RCC § 22E-601, above, current District law generally does not classify offenses, let alone assign specific imprisonment penalties for those classes. Currently, each offense has its own penalty which has been determined through piecemeal legislation, without a comprehensive review of other offenses’ penalties. Without a formal scheme of offense classification to guide legislative decision making and facilitate comparison of offense penalties, a wide range of authorized imprisonment penalties has organically arisen across current District offenses.¹ Nonetheless, most current D.C. Code imprisonment penalties use one of the following nine felony and five misdemeanor numbers: Life (without parole, LWOP),² 60 Years (Y), 40Y, 30Y, 20Y, 15Y, 10Y, 5Y,

¹ For additional background on the frequent imprisonment penalties in D.C. Code offenses, see CCRC Advisory Group Memorandum #9, *Offense Classes & Penalties* (May 5, 2017).

² Since Congressional elimination of parole in the District under the Revitalization Act (discussed below), a “life” sentence in the District is the effective equivalent of “life without parole.”

3Y, 1Y, 180 days, 90 days, 30 days, and fine-only.

The number of RCC penalty classes tracks the number of *de facto* felony and misdemeanor penalties generally in use in the District (i.e. nine felony classes and five misdemeanors), but provide consistently lower term-of-years punishments than the common punishments in the D.C. Code.³ This commentary primarily describes the reasons why these particular maximum imprisonment numbers are imposed for the RCC classes at the most severe offenses (Class 1 and Class 2). Additional commentary briefly addresses: the penultimate level of severity (Class 3); the second misdemeanor level (Class B); the absence of statutory or mandatory minimum sentences; and the rationale for generally setting classes somewhat lower than the current D.C. Code maximum imprisonment penalties.

First, the RCC sets the most severe imprisonment punishments at 45 years and 40 years to provide what are effectively “life with possibility of release” sentences for aggravated first degree murder and first degree murder. A defined term-of-years is preferable to an indefinite “life with possibility of release” penalty because the former provides a clear end date that, on average, will be within the life expectancy of the person incarcerated while it is unclear what mechanisms will effectively ensure the possibility of release in the absence of District parole.⁴ The life expectancy for non-Hispanic black men in the District is just under 69 years.⁵

Since the District’s repeal of the death penalty in 1981,⁶ the most severe punishment under the current D.C. Code is “life without release,” a punishment specifically authorized for: aggravated murders,⁷ aggravated first degree sexual abuse,⁸ aggravated first degree child sexual abuse,⁹ and the third conviction for any “crime of violence.”¹⁰ However, since Congressional elimination of parole in the District,¹¹ second degree murder¹² and certain terrorism offenses carrying a term of “life”¹³ similarly have no provision for release or automatic review and are *de facto* LWOP sentences.

In addition, a wide range of District crimes carry term-of-years punishments of 60

³ Compare the most common D.C. Code offense penalties (first line, usually increments of 5), with those of the RCC (second line):

LWOP, 60Y, 40Y, 30Y, 20Y, 15Y, 10Y, 5Y, 3Y, 1Y, 180 days, 90 days, 30 days
45Y, 40Y, 30Y, 24Y, 18Y, 12Y, 8Y, 4Y, 2Y, 1Y, 180 days, 60 days, 10 days.

⁴ See discussion below regarding the average life expectancy of incarcerated persons in the District and possible early release mechanisms under the RCC and current District law.

⁵ See D.C. Department of Health, *District Of Columbia Community Health Needs Assessment, Volume 1* (March 15, 2013) at 16; Roberts, M., Reither, E.N. & Lim, S. *Contributors to the black-white life expectancy gap in Washington D.C.*, Sci Rep 10, 13416 (2020).

⁶ District of Columbia Death Penalty Repeal Act of 1980, D.C. Law 3-113 (Feb. 26, 1981).

⁷ D.C. Code §§ 22-2104(a) (aggravated first degree murder); 22-2106 (murder of law enforcement officer).

⁸ D.C. Code §§ 22-3002; 22-3020; 24-403.01.

⁹ D.C. Code §§ 22-3008; 22-3020; 24-403.01.

¹⁰ D.C. Code § 22-1804a(a)(2) (repeat offender penalty). “Crime of violence” for purposes of the statute has the same meaning as provided in D.C. Code § 23-1331(4) and includes crimes that require no physical harm to persons (e.g. burglary) and low felony assaults (e.g. significant bodily injury assault, punishable by up to 3 years incarceration).

¹¹ National Capital Revitalization and Self-Government Improvement Act (“D.C. Revitalization Act”), Pub. L. No. 105-33, 111 Stat. 712 (1997).

¹² D.C. Code § 22-2104 (second degree murder).

¹³ D.C. Code § 22-3153 (kidnapping, use and possession of a weapon of mass destruction, manslaughter, murder committed as an act of terrorism).

years that, in the absence of parole, function as *de facto* LWOP sentences based on the life expectancy of those incarcerated. These 60 year offenses include: unaggravated first degree murder (60 years),¹⁴ first degree burglary while armed (60 years),¹⁵ kidnapping while armed (60 years),¹⁶ distribution of a controlled substance while armed (60 years),¹⁷ possession with intent to distribute a controlled substance while armed (60 years),¹⁸ and manslaughter while armed (60 years).¹⁹ Since Congressional elimination of parole, inmates must serve at least 85% of their sentence,²⁰ meaning that even an inmate with a perfect record while incarcerated would not be eligible for release from a 60 year sentence until serving at least 51 years.

Authorities vary on what imprisonment term constitutes a *de facto* LWOP sentence, but recent case law indicates that a term of 50 years is an effective LWOP sentence for *juvenile* offenders.²¹ Because adult offenders are older at the time of entry into incarceration, a *de facto* LWOP sentence for adults logically would be even shorter than 50 years. In fact, the federal Bureau of Prisons (BOP) calculates persons incarcerated for a “life” sentence, including District inmates in BOP custody, as serving a 470 month (39 years and two months) sentence based on their life expectancy.²²

In individual cases, the length of incarceration that actually constitutes a LWOP sentence for a particular individual is fundamentally speculative and variable. Life expectancy is only an estimate of the average time before death (which half the inmate population is predicted to exceed), and a minority of incarcerated individuals may be expected to significantly outlive what for others are *de facto* LWOP sentences. Nonetheless, it appears that for the majority of District inmates, incarceration in the range of 40-50 years would mean those individuals would die in prison. For most District inmates to have a reasonable opportunity to be released some years before their death—i.e., life *with* the possibility of release—those incarcerated must have the opportunity to be released after 30-40 years imprisonment.

In contrast to current District laws that provide LWOP and *de facto* LWOP penalties for many offenses, the RCC establishes maximum imprisonment penalties for its most severe classes that for most people will amount to life *with* the possibility of release. The RCC Class 1 and 2 maximum penalties of 45 and 40 years mean that without early release a 25 year old adult could still be incarcerated until they are 70 or 65, in the range of their current life expectancy. An 18 year old without early release could be incarcerated until they are 63 or 58, about five to ten years short of their current life expectancy. The RCC provides a possibility of release through its revised second look procedures,²³

¹⁴ D.C. Code § 22-2104.

¹⁵ D.C. Code §§ 22-801(a); 22-4502.

¹⁶ D.C. Code §§ 22-2001; 22-4502.

¹⁷ D.C. Code §§ 48-904.01(a)(2); 22-4502.

¹⁸ D.C. Code §§ 48-904.01(a)(2); 22-4502.

¹⁹ D.C. Code §§ 22-2105; 22-4502.

²⁰ D.C. Code § 24-403.01; 18 U.S.C. § 3624(b).

²¹ See *People v. Contreras*, 4 Cal. 5th 349, 369, 411 P.3d 445, 455 (2018), as modified (Apr. 11, 2018) (“[O]ur conclusion that a sentence of 50 years to life is functionally equivalent to LWOP is consistent with the decisions of other state high courts.”)

²² See United States Sentencing Commission, Sourcebook 2017 Appendix A, at S-166 (“[L]ife sentences are reported as 470 months, a length consistent with the average life expectancy of federal criminal offenders given the average age of federal offenders.”).

²³ See RCC § 24-403.03.

available to persons of all ages after serving at least 15 years in prison. Existing BOP rules and regulations applicable to the District’s incarcerated persons provide additional early release mechanisms, including a deduction of up to 15% of the sentence for “good time credit”²⁴ and compassionate release²⁵ for elderly persons in poor health. The maximum good time credit deduction of 15% is 6.75 years from a 45 year sentence (leaving a 38.25 year sentence) and 6 years from a 40 year sentence (leaving a 34 year sentence). Without the RCC second look and BOP early release procedures, the RCC Class 1 and Class 2 maximum penalties would result in many, if not most, of the persons so incarcerated dying while in prison. However, with the RCC second look and BOP early release procedures, most District inmates sentenced to the maximum for Class 1 and Class 2 offenses face life imprisonment with the possibility of release.

Establishing the most severe RCC Class 1 and Class 2 penalties as life with the possibility of release is strongly supported by the recent sentencing recommendations of the American Law Institute (ALI).²⁶ The *ALI Model Penal Code: Sentencing* recommends that, except in jurisdictions where it is the only alternative to the death penalty, imposition of the most severe penalty in criminal law should be life imprisonment with a “meaningful possibility of release before the prisoner’s natural death.”²⁷ The rationale for the ALI rejection of life imprisonment without release is grounded not only in a realistic assessment of life expectancy but in skepticism as to the abilities of a sentencing judge:

Natural-life sentences rest on the premise that an offender’s blameworthiness cannot change substantially over time—even very long periods of time. The sanction denies the possibility of dramatically altered circumstances, spanning a prisoner’s acts of heroism to the pathos of disease or disability, that might alter the moral calculus of permanent incarceration. It also assumes that rehabilitation is not possible or will never be detectable in individual cases. Such compound certainties, reaching into a far-distant future, are not supportable.²⁸

The ALI recommendation that the most severe sentence in a criminal code be life with the possibility of release is made in conjunction with recommendations for a variety of early release mechanisms, including a judicial review of the sentence after 15 years akin to the

²⁴ D.C. Code § 24-403.01; 18 U.S.C. § 3624(b).

²⁵ See 28 CFR part 571, subpart G; D.C. Code § 24-403.04, Motions for compassionate release for individuals convicted of felony offenses.

²⁶ The ALI is a longstanding, leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. Its diverse national membership includes judges, scholars, and practitioners of law. Over the course of eight years, the organization drafted and approved an update to the sentencing provisions in the *ALI Model Penal Code*. The *Model Penal Code: Sentencing* was approved April 10, 2017 and the final text is available online at https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/mpcs_proposed_final_draft.pdf.

²⁷ *Model Penal Code: Sentencing* (Am. Law Inst., 2017), Comment k(2) at 159. (“With one narrow exception, the revised Code continues the policy judgment of the original Code that the most severe sanction in the criminal law should be a life prison term with a meaningful possibility of release before the prisoner’s natural death. In a departure from the Institute’s previous position, the Code now also concedes the policy advisability of life prison sentences with no prospect of release—the equivalent of “life without parole” in some systems—but only when this sanction is the sole alternative to a death sentence.”). As the District is not a death penalty jurisdiction, the ALI recommendation is to reject a life without possibility of release sentence.

²⁸ *Model Penal Code: Sentencing* (Am. Law Inst., 2017), Comment k(2) at 162.

RCC second look provision.²⁹

Despite the continued severity of the RCC penalties and strong support by legal experts for life with possibility of release sentences, the RCC maximum authorized imprisonment penalties set a new national precedent. All states except Alaska authorize “life without release” sentences for at least some offenses,³⁰ and Alaska authorizes a mandatory 99 year term for aggravated murder, a *de facto* life without possibility of release sentence.³¹ Nationally, it has been estimated that over 50,000 people are serving life without parole sentences, although just 5 jurisdictions impose the majority of these terms and seven states have fewer than 50 people serving such sentences.³²

Approximately 44,000 people across the country are also serving sentences of 50 years or greater, though again seven states have fewer than 50 people serving such sentences.³³ The high statutory penalties authorized and imposed by many other states may not be an accurate indicator of actual imprisonment time given the widespread availability of parole in other jurisdictions, however. Data from other jurisdictions indicates that for those in prison for murder and non-negligent manslaughter (combined), 39.6% served less than 10 years before their first release, 50% served 13.4 years or less before their first release, and 69.6% served less than 20 years before their first release.³⁴ Yet, the average length of sentences imposed for these offenses was much, much higher than what was actually served—40.6 years by one calculation, of which only 57.2% was served before first release.³⁵ So, while the purported length of sentences imposed for the most serious crimes in other jurisdictions may be substantially longer than provided in the RCC, it is not clear that such higher authorized penalties translate into longer incarceration periods.

In the District, the direct impact of the RCC Class 1 and Class 2 penalties being set at 45 and 40 years is exclusively, or almost exclusively, on penalties for aggravated first degree murder. During the ten year period of 2010-2019, analysis of District court data indicates that sentences to life and life without parole were given almost exclusively for aggravated first degree first degree murder.³⁶ Similarly, over the 2010-2019 period, all

²⁹ See RCC § 24-403.03.

³⁰ See The Sentencing Project, *Virtual Life Sentences* (August 2019) at 9, <https://www.sentencingproject.org/wp-content/uploads/2019/08/Virtual-Life-Sentences.pdf> (last visited Jan. 9, 2021).; Death Penalty Information Center, *Life without Parole*, at <http://www.deathpenaltyinfo.org/life-without-parole> (last visited Jan. 9, 2021).

³¹ Alaska Stat. § 12.55.125.

³² The Sentencing Project, *Still Life – America’s Increasing Use of Life and Long-Term Sentences* (2017) at 9, 10 (“LWOP sentences have been administered disproportionately in a handful of states: combined, Florida (16.7%), Pennsylvania (10.1%), California (9.6%), Louisiana (9.1%), and the federal system (7.2%) comprise just over half (52.7%) of the nation’s total LWOP population. In Delaware, Louisiana, Massachusetts, and Pennsylvania more than 10 percent of the state prison population is serving a life sentence with no chance for parole.”).

³³ The Sentencing Project, *Still Life – America’s Increasing Use of Life and Long-Term Sentences* (2017) at 9, 10.

³⁴ U.S. Department of Justice Bureau of Justice Statistics, *Time Served in State Prison, 2016*, NCJ 252205 (November 2018) at 2, 3.

³⁵ *Id.* at 4. See note in text regarding the assumptions used to incorporate life and death sentences into this reported average sentence length and percent of sentence served.

³⁶ CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix C - Count of Life Sentences by Charge (Last in Time Data) (Analysis indicating over the 10 year period 2010-2019 that there were 30 convictions carrying life sentences for first degree murder, 6 convictions

District sentences for all charges other than aggravated first degree murder were for fewer than 40 years as far as the analysis indicates (presenting sentences at the 97.5 quantile).³⁷ However, a significant number of aggravated first degree murder sentences were for 40 years or more, and it is reasonable to estimate that up to a quarter of the term of years adult sentences for aggravated murder from 2010-2019 were higher than the RCC Class 1 and 2 maximum penalties would allow.³⁸

The grim reality, however, is that any apparent differences between the 45 and 40 year RCC penalties for Class 1 and Class 2 offenses and authorized sentences in other jurisdictions for aggravated first degree murder, the current D.C. Code authorized penalties, and recent District practice may be irrelevant. As described above, the life expectancy for non-Hispanic black men in the District is just under 69 years.³⁹ Many sentenced to a 45 or 40 year sentence will die in prison. Moreover, a murder charge and penalty is just one way the criminal law may provide liability for an actor's conduct.⁴⁰ If the life expectancy of the incarcerated person is less than either the imprisonment time under the authorized statute (be it the RCC, D.C. Code, or another jurisdiction) or the total imprisonment time to which an individual is subject in the case (including charges beyond the single murder charge), then whether the murder penalty is 40, 45, or 100 years may be irrelevant.⁴¹

for first degree child sexual abuse, 1 conviction for first degree sex abuse (force), and 1 conviction for second degree murder.) For any of these charges to carry a life sentence, one or more aggravators would have to be found. See D.C. Code §§ 22-2104.01; 22-3020. Six other charges are listed as having 1 conviction for a life sentence, but it is unclear if these are errors in the record or the statistical analysis and these offenses legally could only have a life sentence under the rarely used repeat offender enhancement in D.C. Code § 22-1804a. [Research on these particular sentences of life is ongoing. Initial CCRC research indicates that all six of these identified first degree child sexual abuse sentences may have originated from one case. Under the RCC, each conviction for enhanced first degree sex abuse of a child would carry up to a 30 year penalty as a Class 3 offense; a *de facto* LWOP term of years sentence would be available for two (or more) convictions for such severe conduct.]

³⁷ CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix D (Last in Time analysis). Note that 97.5 % (a high as the analysis goes) of sentences for *unenanced* first degree murder were under 40 years.

³⁸ The same analysis of adult dispositions over the timespan 2010-2019 shows that for other than “felony murder” forms of first degree murder, including both aggravated and unenhanced charges, the 75th quantile of sentences was 40 years, the 90th quantile was 45 years, and 95th quantile was nearly 50 years. The analysis also showed that for “felony murder” first degree murder, including both aggravated and unenhanced charges, the 75th quantile of sentences was 42.5 years, the 90th quantile was 60 years, and 95th quantile was nearly 62 years. Combined, convictions for all forms of first degree murder (felony murder and non-felony murder, enhanced and unenhanced) totaled 168 during the 2010-2019 period. CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix D (Last in Time analysis).

³⁹ See D.C. Department of Health, *District Of Columbia Community Health Needs Assessment, Volume 1* (March 15, 2013) at 16; Roberts, M., Reither, E.N. & Lim, S. *Contributors to the black-white life expectancy gap in Washington D.C.*, Sci Rep 10, 13416 (2020).

⁴⁰ For example, depending on the facts of the case, there may be additional liability for possession of a firearm or additional violent acts done on the occasion.

⁴¹ A direct comparison of RCC Class 1 and Class 2 authorized maximum imprisonment penalties to the current first degree and aggravated first degree murder penalties does not account for the fact that many persons facing these murder charges also face or could face additional charges and convictions based on other behavior during the same occasion as the murder. Viewed in terms of the case (which may include charges besides murder) and the possible exercise of discretion by the government to bring additional charges or the sentencing judge to impose consecutive sentences for additional convictions, differences in the available

Lastly, regarding the RCC Class 1 and Class 2 penalties being set to allow for life with the possibility of release, the effect on public safety appears to be minimal. In terms of general deterrence of crime, research indicates that lengthy prison sentences—and even the death penalty—do little or nothing to deter criminal behavior.⁴² Given the extraordinary length and severity of a 40-45 year sentence an individual released after such a period generally would not be expected to pose a public safety threat. Well-established research evidence that individuals “age out” of crime with a sharp drop in criminal behavior as people enter mid and later life.⁴³

The RCC provides a penultimate level of punishment, below life with the possibility of release, at 30 years maximum imprisonment for a Class 3 offense. This remains an extremely severe penalty and only five RCC charges are designated class 3 offenses—enhanced second degree murder and several forms of enhanced sex offenses that are particularly egregious.⁴⁴

While the thirty year maximum for Class 3 stands in sharp contrast to many of the more severe penalties authorized in the D.C. Code for non-murder offenses,⁴⁵ it is sufficiently severe to encompass nearly all District sentences given to adults 2010-2019 for all charges other than first degree murder. Based on available analysis of District court data over that 10 year period, up to about 20 convictions for crimes other than first degree murder had sentences in excess of 30 years or for life.⁴⁶ These convictions are comprised of some number less than 5% of the 148 sentences for first degree sexual abuse were for more than 30 years,⁴⁷ and 8-14 life sentences for first degree child sexual abuse, first degree sexual abuse, second degree murder, and perhaps some other offenses.⁴⁸ The main effect

statutory maximum for a single charge of aggravated first degree murder under the RCC as compared to the current D.C. Code may also be moot if there is a higher total imprisonment penalty that may be imposed for all charges and convictions in the case.

⁴² See, e.g., National Institute of Justice, *Five Things About Deterrence* NCJ 247350 (May 2016) at 1, 2 (citing relevant research and summarizing that, “There is no proof that the death penalty deters criminals,” and “Increasing the severity of punishment does little to deter crime.”).

⁴³ Michael R. Gottfredson and Travis Hirschi, *A General Theory of Crime* (Stanford University Press, 1990), at 124-130 (stating that “the shape or form of the [age-crime] distribution has remained virtually unchanged for about 150 years”); National Institute of Justice, *Five Things About Deterrence* NCJ 247350 (May 2016) at 2 (“Even those individuals who commit crimes at the highest rates begin to change their criminal behavior as they age. The data show a steep decline at about age 35. A more severe (i.e., lengthy) prison sentence for convicted individuals who are naturally aging out of crime does achieve the goal of punishment and incapacitation. But that incapacitation is a costly way to deter future crimes by aging individuals who already are less likely to commit those crimes by virtue of age.”).

⁴⁴ See RCC §§ 22E-1101 enhanced second degree murder, 22E-1301 enhanced first degree sex assault, 22E-1302 enhanced first degree sex abuse of a minor, 22E-1602 enhanced forced commercial sex, and 22E-1608 first degree commercial sex with a trafficked person.

⁴⁵ See discussion above regarding life and term of years sentences that are *de facto* life sentences authorized under the current D.C. Code.

⁴⁶ See generally, CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix D (Last in Time analysis).

⁴⁷ CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix D (Last in Time analysis) (Stating that the 95th quantile for the 124 convictions for D.C. Code § 22-3302(a)(1) was 26 years, while the 97.5 quantile was 37 years.)

⁴⁸ CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix C - Count of Life Sentences by Charge (Last in Time Data) (Analysis indicating over the 10 year period 2010-2019 there were life sentences for 6 convictions for first degree child sexual abuse, 1 conviction

of the RCC Class 3 30 year maximum as compared to currently authorized statutory maximums may be in plea bargaining, as the upper limit of the sentence is less severe. About 10% of second degree murder and first degree sexual abuse sentences of District adult offenders 2010-2019 are for 25 years or more.⁴⁹

The RCC provides for a 180-day penalty for Class B misdemeanors but makes no allowance for a “six month” penalty as is used for several offenses in the current D.C. Code. The distinction between 180 days and six months in current District law does not reflect a substantive distinction in the seriousness of the offense or its imprisonment penalty but is a procedural distinction not mentioned in those offenses. Under Supreme Court precedent, offenses involving penalties of more than six months are subject to a Sixth Amendment right to a jury trial, whereas offenses with lesser penalties generally are not.⁵⁰ However, nothing prevents a jurisdiction from voluntarily extending jury trial rights to offenses subject to penalties of six months or less and RCC makes all offenses with an imprisonment penalty over 60 days jury demandable.⁵¹ Rather than perpetuate a distinction between 180 day and six month penalties in the absence of a difference in jury demandability, the RCC classification system makes all Class B offenses subject to a maximum 180 days imprisonment.⁵²

The RCC penalty classes do not include a minimum term of imprisonment of any sort for any offense. Sentencing guidelines, rather than statutory mandates, are a more appropriate way to guide judicial decision making among competing⁵³ sentencing

for first degree sex abuse (force), and 1 conviction for second degree murder.) For any of these charges to carry a life sentence, one or more aggravators would have to be found. *See* D.C. Code §§ 22–2104.01; 22–3020. Six other charges are listed as having 1 conviction for a life sentence, but it is unclear if these are errors in the record or the statistical analysis and these offenses legally could only have a life sentence under the rarely used repeat offender enhancement in D.C. Code § 22–1804a. [Research on these particular sentences of life is ongoing. Initial CCRC research indicates that all six of these first degree child sexual abuse sentences may have originated from one case. Under the RCC, each conviction for enhanced first degree sex abuse of a child would carry up to a 30 year penalty as a Class 3 offense; a *de facto* LWOP term of years sentence would be available for two (or more) convictions for such severe conduct.]

⁴⁹ CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix D (Last in Time analysis). Notably, RCC § 22E-1301 enhanced first degree sex assault and RCC § 22E-1302 enhanced first degree sex abuse of a minor are Class 3 offenses carrying a 30 year maximum penalty, whereas the unenhanced versions—RCC § 22E-1301 first degree sex assault and RCC § 22E-1302 first degree sex abuse of a minor—are Class 4 offenses, carrying a 24 year maximum penalty. Analysis of court data indicates that, for adult sentences 2010-2019, the 97.5 quantile of all (enhanced and unenhanced) first degree child sexual abuse (D.C. Code § 22-3008) sentences was 20 years. Similarly, for adult sentences 2010-2019, the 90th quantile of all (enhanced and unenhanced) first degree sexual abuse (D.C. Code § 22-3002) sentences was 25 years, and the 75th quantile of all (enhanced and unenhanced) first degree sexual abuse was 16.5 years.

⁵⁰ *Blanton v. City of N. Las Vegas*, 489 U.S. 538, 543 (1989) (holding that “we do find it appropriate to presume for purposes of the Sixth Amendment that society views such an offense as ‘petty.’ A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a ‘serious’ one.”). *See also* D.C. Code § 16-705 (permitting jury trials when the possible cumulative punishment exceeds two years).

⁵¹ *See* revised D.C. Code § 16-705 (Jury trial; trial by court) and accompanying commentary.

⁵² A 180 day penalty was selected over 6 months solely because of its slightly greater clarity and specificity.

⁵³ D.C. Code § 24–403.01(a) (“For any felony committed on or after August 5, 2000, the court shall impose a sentence that:

- (1) Reflects the seriousness of the offense and the criminal history of the offender;

mandates. The ability of the legislature to foresee all circumstances that may be relevant to sentencing is limited, and even the most severe criminal offense, aggravated first degree murder, may not merit a lengthy imprisonment term in some circumstances.⁵⁴ Elimination of legislatively-mandated minimum sentences is consistent the reasoning of the Council in recent years when considering whether to extend mandatory minimum sentences.⁵⁵ Decades of research evidence indicates that mandatory minimums do not solve the problems of inconsistent sentences that they were intended to solve, but instead exacerbate disproportionality and have numerous other negative effects on the justice system.⁵⁶ In light of this evidence, the most prominent legal authorities have called for an end to mandatory minimums, including the Judicial Conference of the United States,⁵⁷ the

(2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and

(3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.”).

⁵⁴ For example, a spouse or child acting with a bona fide compassionate motive to administer a fatal medication to end the life of a terminally-ill, elderly person may be charged with aggravated first degree murder under RCC § 22E-1101(d)(3)(A) and current D.C. Code § 22-2104.01(b)(10). If an effective consent defense (per RCC § 22E-409) and/or compliance with the procedures for physician assisted death in D.C. Code § 7-661.11 cannot be proven, the actor would face a maximum imprisonment of 60 years for a Class 1 offense under the RCC, or a maximum of life without parole and a mandatory minimum of 30 years under D.C. Code § 22-2104.01.

⁵⁵ See, e.g., Committee on the Judiciary, *Report on Bill 16-247, the “Omnibus Public Safety Act of 2006”* at 8-9 (April 28, 2006). (“Mandatory minimum sentences base punishment solely on perceived gravity of the criminal offense. By law, judges must sentence the defendant to a mandated prison term regardless of the defendant’s role in the offense, culpability, or seriousness of the actual occurrence. Mandatory minimums severely limit or eliminate a judge’s ability to distinguish between the least and most culpable defendants, even though the judge is the most impartial and most familiar with the facts of the case, and the judge’s actions are public. Instead, mandatory minimums vest sentencing discretion in the prosecutor, even though the prosecutor is not impartial, and the prosecutor’s decision is insulated from public and judicial scrutiny. The prosecutor is the one who seeks to plea bargain. Or who decides what charge (i.e. crime) to prosecute. So the prosecutor decides whether to threaten a mandatory minimum in order to force a plea bargain. Or the prosecutor decides whether to charge a lesser offense, that does not entail a mandatory minimum, because the chance of conviction is better. However the prosecutor chooses to use the range of offenses available to charge in order to obtain a conviction, the fact is that with mandatory minimums the role of discretion is great with the prosecutor and virtually nonexistent with the judge.”).

⁵⁶ American Law Institute, *Model Penal Code: Sentencing* (April 10, 2017) at 149 (“During the past several decades, accumulating knowledge has only strengthened the case that mandatory sentencing provisions do not further their purported objectives and work substantial harms on individuals, the criminal-justice system, and society. Empirical research and policy analyses have shown time and again that mandatory-minimum penalties fail to promote uniformity in punishment and instead exacerbate sentencing disparities, lead to disproportionate and even bizarre sanctions in individual cases, are ineffective measures for advancing deterrent and incapacitate objectives, distort the plea-bargaining process, shift sentencing authority from courts to prosecutors, result in pronounced geographic disparities due to uneven enforcement patterns in different prosecutors’ offices, coerce some innocent defendants to plead guilty to lesser charges to avoid the threat of a mandatory term, undermine the rational ordering of graduated sentencing guidelines, penalize low-level and unsophisticated offenders more so than those in leadership roles, provoke nullification of the law by lawyers, judges, and jurors, and engender public perceptions in some communities that the criminal law lacks moral legitimacy.”).

⁵⁷ Judicial Conference of the United States *Letter to the U.S. Sentencing Commission dated July 31, 2017* (as approved by the Executive Committee, effective March 14, 2017) (“The Commission is well aware of the Judicial Conference’s longstanding position opposing mandatory minimum penalties and its support of legislative efforts such as expansion of the “safety valve” at 18 U.S.C. 3553(f). Mandatory minimum

American Law Institute,⁵⁸ and the American Bar Association.⁵⁹

Finally, several points should be noted on the rationale for generally setting classes somewhat lower than the current D.C. Code maximum imprisonment penalties, and on the classification of specific RCC offenses using the punishments authorized by 22E-603(b).

First, under RCC § 24-403.01(b-1) the amount of possible imprisonment (“backup”) time for revocation from supervised release no longer must be subtracted from the maximum statutory penalty when calculating the sentence that a court can impose. This is a substantial change in the practical meaning of a statutory maximum. Current D.C. Code § 24-403.01(b-1) requires the court to deduct such backup time, such that a person being sentenced for committing an offense with a 3 year statutory maximum can actually only be sentenced to imprisonment for 2 years maximum to allow for the one year backup time under D.C. Code § 24-403.01 (b)(7). Similarly, a court currently can only impose a prison sentence for a maximum of 3 years even though the statutory maximum is 5 years, because every offense that has a statutory maximum of 5 years or more (but less than 25) is subject to 2 years backup time which must be deducted from the 5 year maximum.⁶⁰ The RCC’s elimination of the requirement that the court deduct backup time when calculating the term of imprisonment that can be imposed makes the stated statutory maximum a direct statement of the imprisonment time a judge can impose at sentencing. The change also means that the slight 1-3 year reductions in the RCC penalty classes as compared to the

sentences waste valuable taxpayer dollars, create tremendous injustice in sentencing, undermine guideline sentencing, and ultimately foster a lack of confidence in the criminal justice system. For over sixty years, the Judicial Conference has consistently and vigorously opposed mandatory minimum sentencing provisions and has supported measures for their repeal or to ameliorate their effects. The Judicial Conference also supports the Commission in its work in pursuit of an amendment to 18 U.S.C. § 924(c) to preclude the stacking of counts and make clear that additional penalties apply only when, prior to the commission of such offense, one or more convictions of such person have become final.”) (<https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20170731/CLC.pdf>).

⁵⁸ American Law Institute, *Model Penal Code: Sentencing* (April 10, 2017) at 166 (“Even if it were a desirable policy in the abstract, legislatively mandated sentencing uniformity has never been achieved in practice. Studies of the operation of mandatory-minimum penalties show that they are not enforced by prosecutors in all eligible cases. Selective charging and the plea-bargaining process lead to uneven application of the seemingly flat penalties. Evidence suggests that racial and ethnic biases sometimes influence the application of mandatory-minimum statutes. In addition, mandatory sentencing laws tend to be applied differently in different locales within a single state. Empirical, theoretical, and anecdotal accounts all support the conclusion that the attempt to eliminate judicial sentencing authority through mandatory-penalty provisions does not promote consistency, but merely shifts the power to individualize punishments from courts to prosecutors.”).

⁵⁹ ABA House of Delegates, Resolution 10B on Mandatory Minimums (2017), at 4. (“RESOLVED, That the American Bar Association opposes the imposition of a mandatory minimum sentence; and FURTHER RESOLVED, That the American Bar Association urges Congress, state and territorial legislatures to repeal existing criminal laws requiring minimum sentences, and to refrain from enacting laws punishable by mandatory minimum sentences.”).

⁶⁰ See D.C. Code § 24-403.01 (7) (“An offender whose term of supervised release is revoked may be imprisoned for a period of: (A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is life or the offense is specifically designated as a Class A felony; (B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life and the offense is not specifically designated as a Class A felony; (C) Not more than 2 years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or (D) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than 5 years.”).

common penalties in the D.C. Code⁶¹ are largely moot as a practical matter, because the amount of the reduction simply accounts for the fact that backup time no longer has to be subtracted under D.C. Code § 24-403.01(b-1).⁶²

Second, as applied to specific RCC offenses, the RCC penalty classifications seek to ensure proportionate punishment for criminal behavior as a whole, including the most serious forms of that behavior. However, where conduct can be charged under multiple offenses (as is common in particularly egregious harms) the RCC may not rely on the statutory maximum of one criminal charge to provide a proportionate response to the conduct as a whole. The government in such instances would need to charge and prove multiple offenses, each carrying its own penalty. If a sentencing judge deems it necessary under the goals of sentencing,⁶³ the judge continues to have discretion under the RCC to run sentences consecutively.⁶⁴

Third, as applied to specific RCC offenses, the maximum imprisonment authorized in 22E-603 classes typically encompass all or all but the top 5% of sentences issued by District judges in recent years.⁶⁵ In some instances, however, the RCC penalty classification for a particular offense would appear to preclude an even larger percentage of sentences under recent court practice. For example, the RCC proposes penalties for various degrees of burglary under RCC 22E §2701 ranging from Class 7 (8 years) to Class A (1 year). These RCC burglary maximum penalties are both dramatically lower than the statutory penalties under the current D.C. Code which authorize 60 years for similar conduct,⁶⁶ and are substantially lower than current District practice.⁶⁷ However, for burglary and other instances the review of sources beyond current District statutory law and practice, such as the precedent of other jurisdictions⁶⁸ and District public opinion about

⁶¹ Compare the most common D.C. Code offense penalties (first line, usually increments of 5), with those of the RCC (second line):

LWOP, 60Y, 40Y, 30Y, 20Y, 15Y, 10Y, 5Y, 3Y, 1Y, 180 days, 90 days, 30 days

45Y, 40Y, 30Y, 24Y, 18Y, 12Y, 8Y, 4Y, 2Y, 1Y, 180 days, 60 days, 10 days.

⁶² As discussed further in the commentary to RCC § 24-403.01 under the revised statute, backup time continues to exist, it just is no longer deducted from the statutory maximum. The total term of imprisonment imposed for revocation of supervised release in addition to the initial sentence imposed may exceed the statutory maximum sentence authorized for any given offense.

⁶³ D.C. Code § 24-403.01(a).

⁶⁴ D.C. Code § 23-112.

⁶⁵ See CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions; Appendix G – Correspondence of RCC to DC Code Penalties.

⁶⁶ For example, under the current D.C. Code first degree burglary while armed carries a 60 year statutory maximum. D.C. Code §§ 22-2001; 22-4502.

⁶⁷ CCRC Research Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions, Appendix D (Last in Time analysis). Analysis of court data indicates that, for adult sentences 2010-2019, (enhanced and unenhanced) for first degree burglary (D.C. Code § 22-801) sentences were 15 years for the 97.5th quantile, 12 years for the 90th quantile, 8.5 years for the 75th quantile, 5 years for the 50th quantile, and 3 years for the 25th quantile.

⁶⁸ See e.g. Cal. Penal Code § 461 (providing for maximum penalties for first degree (residential) burglary of two, four, or six years based on prior offenses); Haw. Rev. Stat. §§ 708-810, 706-660 (providing a maximum of 10 years for first degree burglary while armed); U.S. Department of Justice Bureau of Justice Statistics, *Time Served in State Prison, 2016*, November 2018 at 3 (Nationally, for burglary, 78.3% of prisoners served less than 3 years, 91.5% of prisoners served less than 5 years, and 98.1% of prisoners served less than 10 years before release, when the burglary was the most serious crime. The statistics appear to include all forms of burglary, including enhanced forms of burglary due to prior convictions or presence of a weapon.)

the relative severity of offenses,⁶⁹ have indicated the need for a change to District law.

Fourth, and finally, the RCC penalty classifications are not intended to be a static or fully detailed guide to what constitutes a proportionate sentence. The RCC 22E-603 penalty classifications reflect the first comprehensive review and change to District statutory penalties since the D.C. Code was first enacted in 1901. As subsequent amendments are made to District criminal laws and norms change, additional changes will be necessary to ensure the law provides maximum penalties that are just. The District's sentencing guidelines also must also be reformed in light of the changes in RCC 22E-603, the classification of specific offenses, and changes to offense elements and grading to further improve the consistency and proportionality of sentencing in individual cases. RCC 22E-603 provides maximum imprisonment sentences to accommodate extreme forms of a particular crime and it is expected that imprisonment terms for ordinary forms of RCC crimes will be far lower than the statutory limits.

Subsection 22E-603(b) cross-references standard definitions of “felony” and “misdemeanor” and does not change current District law.⁷⁰

⁶⁹ See the responses to survey questions in Advisory Group Memo #27 - Public Opinion Surveys on Ordinal Ranking of Offenses. (Question 3.27 provided the scenario: “Entering an occupied home intending to steal property while armed with a gun. When confronted by an occupant, the person displays the gun, then flees without causing an injury or stealing anything.” Question 3.27 had a mean response of 6.8, less than one class above the 6.0 milestone corresponding to felony assault, currently a 3 year offense in the D.C. Code. Question 1.07 provided the scenario: “Entering an occupied home intending to steal property and causing minor injury to the occupant before fleeing. Nothing is stolen.” Question 1.07 had a mean response of 6.1, just barely above the 6.0 milestone corresponding to felony assault, currently a 3 year offense in the D.C. Code. Question 1.08 “Entering an occupied home with intent to cause a serious injury to an occupant and inflicting such an injury.” Question 1.08 had a mean response of 8.5, just a half-class above the 8.0 milestone corresponding to aggravated assault (causing a serious injury), currently a 10-year offense in the D.C. Code.)

⁷⁰ See commentary on these terms in RCC § 22E-701 for further details.

2. Updated classification recommendations: Appendix E. Table of RCC Specific Offense Classifications;

Copies of spreadsheets, below, provide draft recommendations for the classification of all RCC offenses.¹

As in prior drafts, rows of the sheet present discrete RCC offenses, offense gradations and offense-specific enhancements. Every RCC offense drafted to-date is listed, by RCC citation and name. Columns of the sheet present, besides the RCC citation and name, a classification and a tabular display of that classification. Classifications range from 1-9 for felonies (over 1 year) and A-E for misdemeanors (1 year or less). For convenience of review, one sheet of the spreadsheet is ordered by the RCC citation, a second sheet of the same data is ordered by the proposed class. **Red highlighting** indicates new or changed classifications since the last time draft penalty recommendations were issued, in the Third Draft of Report #41 – Ordinal Ranking of Maximum Imprisonment Penalties.

Please assume offense elements are the same as in the latest RCC draft recommendations (dated 12/24/20) and supplemented by this report when providing comments. The CCRC appreciates that assessing penalty recommendations requires consideration of a large and complex number of variables about how other changes in the RCC recommendations will affect sentencing practices, and that all RCC remain subject to change. Nonetheless, assessing draft penalties for the RCC offenses as currently drafted is a discrete, achievable, and critical step toward developing the final recommendations on penalties.

Please explain the basis of any changes that are suggested in written comments on these penalty recommendations. Under separate cover, the CCRC has provided various data sources that you may wish to consider as part of your review and may provide evidence in support of your comments. See, for example: Advisory Group Memo #26 – DC Code Statutory Penalties and Voluntary Sentencing Guidelines; Advisory Group Memo #27 – Public Opinion Surveys on Ordinal Ranking of Offenses; Advisory Group Memo #38 - Statistics on District Adult Criminal Charges and Convictions; Advisory Group Memo #40 - Statistics on District Adult Criminal Charges and Convictions; and Advisory Group Memorandum #41 - Supplemental Materials to the First Draft of Report #69 (Appendix G). See also the American Law Institute recommendations in the Model Penal Code: Sentencing² and other external materials previously provided and cited by the CCRC.

The CCRC would particularly welcome other data (e.g. particular District cases) that may aid the agency's efforts to evaluate proportionality. If case information is provided in comments, please provide as much information as possible about the facts of the case, charges, and conviction(s). This is necessary because often case law addresses

¹ The corresponding spreadsheets themselves are attached to Advisory Group Memorandum #41 - Supplemental Materials to the First Draft of Report #69 (Jan. 15, 2021).

² The *Model Penal Code: Sentencing* was approved April 10, 2017 and the final text is available online at https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/mpcs_proposed_final_draft.pdf.

only one aspect of a case or criminal conduct and, considered in isolation, may misrepresent the possible and actual charges, convictions, and sentencing that occurred.

Appendix E. Table of RCC Specific Offense Classifications (Ordered by Citation)

RCC §	RCC Offense Name	Class	1	2	3	4	5	6	7	8	9	A	B	C	D	E
			45Y-540M	40Y-480M	30Y-360M	24Y-288M	18Y-216M	12Y-144M	8Y-96M	4Y-48M	2Y-24M	1Y-12M	0Y-180D	0Y-60D	0Y-10D	0Y-0D
210	Accomplice (Same as Predicate)															
301	Attempt (50% of Predicate)															
302	Solicitation (50% of Predicate)															
303	Conspiracy (50% of Predicate)															
606	Misdemeanor Repeat Offender Enhancement											60D	60D	10D	10D	10D
606	Felony Repeat Offender Enhancement		6	6	4	4	2	2	1	1	180D					
607	Pretrial Release Penalty Enhancement		6	6	4	4	2	2	1	1	180D	60D	60D	10D	10D	10D
608	Hate Crime Enhancement (+1 Class)															
610	Abuse of Government Power Enhancement (+1 Class)															
1101	Enhanced 1st Murder	1	x													
1101	1st Murder	2		x												
1101	Enhanced 2nd Murder	3			x											
1101	2nd Murder	4				x										
1102	Enhanced Vol. Manslaughter	4				x										
1102	Vol. Manslaughter	5					x									
1102	Enhanced Invol. Manslaughter	6						x								
1102	Invol. Manslaughter	7							x							
1103	Negligent Homicide	8								x						
1201	Enhanced 1st Robbery	5					x									
1201	1st Robbery	6						x								
1201	Enhanced 2nd Robbery (significant bodily injury by dang weapon)	6						x								
1201	Enhanced 2nd Robbery (all but significant bodily injury by dang weapon)	7							x							
1201	2nd Robbery	8								x						
1201	Enhanced 3rd Robbery (bodily injury by dang weapon)	7							x							
1201	Enhanced 3rd Robbery (all but bodily injury by dang weapon)	8								x						
1201	3rd Robbery	9									x					
1202	1st Assault	6						x								
1202	Enhanced 2nd Assault	6						x								
1202	2nd Assault	7							x							
1202	Enhanced 3rd Assault (weapon)	7							x							
1202	Enhanced 3rd Assault (protected person)	8								x						
1202	3rd Assault	9									x					
1202	Enhanced 4th Assault (weapon)	8								x						
1202	Enhanced 4th Assault (protected person)	A										x				
1202	4th Assault	B											x			
1204	Enhanced 1st Criminal Threats	8								x						
1204	1st Criminal Threats	9									x					
1204	Enhanced 2nd Criminal Threats	9									x					
1204	2nd Criminal Threats	B											x			
1204	Enhanced 3rd Criminal Threats	B											x			

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1204	3rd Criminal Threats	C												x		
1205	Enhanced 1st Offensive Physical Contact	B											x			
1205	1st Offensive Physical Contact	C												x		
1205	Enhanced 2nd Offensive Physical Contact	C												x		
1205	2nd Offensive Physical Contact	D													x	
1301	Enhanced 1st Sex Assault	3			x											
1301	1st Sex Assault	4				x										
1301	Enhanced 2nd Sex Assault	4				x										
1301	2nd Sex Assault	5					x									
1301	Enhanced 3rd Sex Assault	6						x								
1301	3rd Sex Assault	7							x							
1301	Enhanced 4th Sex Assault	7								x						
1301	4th Sex Assault	8									x					
1302	Enhanced 1st Sex Abuse of Minor	3			x											
1302	1st Sex Abuse of Minor	4				x										
1302	Enhanced 2nd Sex Abuse of Minor	4				x										
1302	2nd Sex Abuse of Minor	5					x									
1302	Enhanced 3rd Sex Abuse of Minor	5						x								
1302	3rd Sex Abuse of Minor	6							x							
1302	Enhanced 4th Sex Abuse of Minor	5					x									
1302	4th Sex Abuse of Minor	6							x							
1302	Enhanced 5th Sex Abuse of Minor	6								x						
1302	5th Sex Abuse of Minor	7									x					
1302	Enhanced 6th Sex Abuse of Minor	7										x				
1302	6th Sex Abuse of Minor	8											x			
1303	1st Sexual Abuse by Exploitation	7														
1303	2nd Sexual Abuse by Exploitation	8														
1304	Sexually Suggestive Conduct with a Minor	A														
1305	Enticing a Minor Into Sexual Conduct	9														
1306	Arranging for Sexual Conduct with a Minor	9														
1307	1st Nonconsensual Sexual Conduct	9														
1307	2nd Nonconsensual Sexual Conduct	A														
1308	First Degree Incest	8														
1308	Second Degree Incest	A														
1401	Enhanced First Degree Kidnapping	4				x										
1401	First Degree Kidnapping	5					x									
1401	Enhanced Second Degree Kidnapping	6								x						
1401	Second Degree Kidnapping	7									x					
1402	Enhanced Criminal Restraint	8														
1402	Criminal Restraint	A														
1403	Blackmail	8														
1501	1st Criminal Abuse of Minor	6														

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1501	2nd Criminal Abuse of Minor	8								x						
1501	3rd Criminal Abuse of Minor	9									x					
1502	1st Criminal Neglect of Minor	8								x						
1502	2nd Criminal Neglect of Minor	A										x				
1502	3rd Criminal Neglect of Minor	B											x			
1503	1st Criminal Abuse of a Vulnerable Adult or Elderly Person	6						x								
1503	2nd Criminal Abuse of a Vulnerable Adult or Elderly Person	8								x						
1503	3rd Criminal Abuse of a Vulnerable Adult or Elderly Person	9									x					
1504	1st Criminal Neglect of a Vulnerable Adult or Elderly Person	8								x						
1504	2nd Criminal Neglect of a Vulnerable Adult or Elderly Person	A										x				
1504	3rd Criminal Neglect of a Vulnerable Adult or Elderly Person	B											x			
1601	Enhanced Forced Labor	4				x										
1601	Forced Labor	5					x									
1602	Enhanced Forced Commercial Sex	3			x											
1602	Forced Commercial Sex	4				x										
1603	Enhanced Trafficking in Labor or Services	5					x									
1603	Trafficking in Labor or Services	6						x								
1604	Enhanced Trafficking in Forced Commercial Sex	5					x									
1604	Trafficking in Forced Commercial Sex	6						x								
1605	Enhanced Sex Trafficking of a Minor or Adult Incapable of Consenting	4				x										
1605	Sex Trafficking of a Minor or Adult Incapable of Consenting	5					x									
1606	1st Benefitting from Human Trafficking	6						x								
1606	2nd Benefitting from Human Trafficking	7							x							
1607	1st Misuse of Documents in Furtherance of Human Trafficking	8								x						
1607	2nd Misuse of Documents in Furtherance of Human Trafficking	9									x					
1608	1st Commercial Sex with a Trafficked Person	3			x											
1608	2nd Commercial Sex with a Trafficked Person	4				x										
1801	Enhanced Stalking	9									x					
1801	Stalking	A										x				
1802	Enhanced Electronic Stalking	9									x					
1802	Electronic Stalking	A										x				
1803	Enhanced 1st Voyeurism	8								x						
1803	1st Voyeurism	9									x					
1803	Enhanced 2nd Voyeurism	A										x				
1803	2nd Voyeurism	B											x			
1804	Enhanced Unauthorized Disclosure of Sexual Recordings	9									x					
1804	Unauthorized Disclosure of Sexual Recordings	B											x			
1805	Distribution of an Obscene Image	C												x		
1806	Distribution of an Obscene Image to a Minor	B											x			
1807	1st Creating or Trafficking an Obscene Image of a Minor	7							x							

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1807	2nd Creating or Trafficking an Obscene Image of a Minor	8								x						
1808	1st Possession of an Obscene Image of a Minor	8								x						
1808	2nd Possession of an Obscene Image of a Minor	9									x					
1809	1st Arranging a Live Sexual Performance of a Minor	7							x							
1809	2nd Arranging a Live Sexual Performance of a Minor	8								x						
1810	1st Attending or Viewing a Live Sexual Performance of a Minor	8								x						
1810	2nd Attending or Viewing a Live Sexual Performance of a Minor	9									x					
2101	1st Theft (\$500000+)	7							x							
2101	2nd Theft (\$50000+)	8								x						
2101	3rd Theft (\$5000+)(motor vehicle)	9									x					
2101	4th Theft (\$500+)(person)	A										x				
2101	5th Theft (Any)	C												x		
2102	Unauthorized Use of Property	D													x	
2103	Unauthorized Use of Motor Vehicle	A										x				
2104	Shoplifting	D													x	
2105	First Unlawful Creation or Possession Recording	C												x		
2105	Second Unlawful Creation or Possession Recording	D													x	
2106	Unlawful Operation of Recording Device in Motion Picture Theater	D													x	
2201	1st Fraud (\$500000+)	7							x							
2201	2nd Fraud (\$50000+)	8								x						
2201	3rd Fraud (\$5000+)	9									x					
2201	4th Fraud (\$500+)	A										x				
2201	5th Fraud (Any)	C												x		
2202	1st Payment Card Fraud (\$500000+)	7							x							
2202	2nd Payment Card Fraud (\$50000+)	8								x						
2202	3rd Payment Card Fraud (\$5000+)	9									x					
2202	4th Payment Card Fraud (\$500+)	A										x				
2202	5th Payment Card Fraud (Any)	C												x		
2203	1st Check Fraud (\$5000+)	9									x					
2203	2nd Check Fraud (\$500+)	A										x				
2203	3rd Check Fraud (Any)	C												x		
2204	1st Forgery	8								x						
2204	2nd Forgery	9									x					
2204	3rd Forgery	A										x				
2205	1st Identity Theft (\$500000+)	7							x							
2205	2nd Identity Theft (\$50000+)	8								x						
2205	3rd Identity Theft (\$5000+)	9									x					
2205	4th Identity Theft (\$500+)	A										x				
2205	5th Identity Theft (Any)	C												x		

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2207	1st Unlawful Labeling of Recording	C												x		
2207	2nd Unlawful Labeling of Recording	D													x	
2208	1st Financial Exploitation of a Vulnerable Adult or Elderly Person (\$500000+)	6						x								
2208	2nd Financial Exploitation of a Vulnerable Adult or Elderly Person (\$50000+)	7							x							
2208	3rd Financial Exploitation of a Vulnerable Adult or Elderly Person (\$5000+)	8								x						
2208	4th Financial Exploitation of a Vulnerable Adult or Elderly Person (\$500+)	9									x					
2208	5th Financial Exploitation of a Vulnerable Adult or Elderly Person (Any)	B											x			
2210	1st Trademark Counterfeiting	A										x				
2210	2nd Trademark Counterfeiting	C												x		
2301	1st Extortion (\$500000+)	6						x								
2301	2nd Extortion (\$50000+)	7							x							
2301	3rd Extortion (\$5000+)	8								x						
2301	4th Extortion (\$500+)	9									x					
2301	5th Extortion (Any)	B											x			
2401	1st Possession of Stolen Property (\$500000+)	8								x						
2401	2nd Possession of Stolen Property (\$50000+)	9									x					
2401	3rd Possession of Stolen Property (\$5000+)	A										x				
2401	4th Possession of Stolen Property (\$500+)	B											x			
2401	5th Possession of Stolen Property (Any)	D														x
2402	1st Trafficking Stolen Property (\$500000+)	7							x							
2402	2nd Trafficking Stolen Property (\$50000+)	8								x						
2402	3rd Trafficking Stolen Property (\$5000+)	9									x					
2402	4th Trafficking Stolen Property (\$500+)	A										x				
2402	5th Trafficking Stolen Property (Any)	C												x		
2403	1st Alteration of a Motor Vehicle Identification Number	9									x					
2403	2nd Alteration of a Motor Vehicle Identification Number	B											x			
2404	Alteration of Bicycle Identification Number	D														x
2501	1st Arson	5					x									
2501	2nd Arson	7							x							
2501	3rd Arson	9									x					
2502	Reckless Burning	A										x				
2503	1st Criminal Damage to Property (\$500000+)	7							x							
2503	2nd Criminal Damage to Property (\$50000+)	8								x						
2503	3rd Criminal Damage to Property (\$5000+)	9									x					
2503	4th Criminal Damage to Property (\$500+)	A										x				
2503	5th Criminal Damage to Property (Any)	C												x		
2504	Criminal Graffiti	D														x

Appendix E. Table of RCC Specific Offense Classifications (Ordered by Citation)

RCC §	RCC Offense Name	Class	1	2	3	4	5	6	7	8	9	A	B	C	D	E
			45Y-540M	40Y-480M	30Y-360M	24Y-288M	18Y-216M	12Y-144M	8Y-96M	4Y-48M	2Y-24M	1Y-12M	0Y-180D	0Y-60D	0Y-10D	0Y-0D
2601	1st Trespass	B											x			
2601	2nd Trespass	C												x		
2601	3rd Trespass	D													x	
2701	Enhanced 1st Burglary	7							x							
2701	1st Burglary	8								x						
2701	Enhanced 2nd Burglary	8								x						
2701	2nd Burglary	9									x					
2701	Enhanced 3rd Burglary	9									x					
2701	3rd Burglary	A										x				
2702	Possession Tools to Commit Property Crime	D													x	
3201	1st Impersonation of an Official	9									x					
3201	2nd Impersonation of an Official	B											x			
3202	Misrepresentation as a District of Columbia Entity	C												x		
3401	1st Escape from Correctional Facility or Officer	8								x						
3401	2nd Escape from Correctional Facility or Officer	A										x				
3401	3rd Escape from Correctional Facility or Officer	C												x		
3402	Tampering with a Detection Device	B											x			
3403	1st Correctional Facility Contraband	9									x					
3403	2nd Correctional Facility Contraband	A										x				
4101	1st Possession of a Prohibited Weapon or Accessory (assault weapon)	8								x						
4101	2nd Possession of a Prohibited Weapon or Accessory (bump stock)	9									x					
4102	1st Carrying a Dangerous Weapon (firearm school zone)	8								x						
4102	2nd Carrying a Dangerous Weapon (firearm)	9									x					
4102	3rd Carrying a Dangerous Weapon (dang weap)	B											x			
4103	1st Possession of a Dangerous Weapon With Intent to Commit Crime (explosive)	8								x						
4103	2nd Possession of a Dangerous Weapon With Intent to Commit Crime (firearm, imitation, dw)	A										x				
4104	1st Possession of a Dangerous Weapon During a Crime (firearm)	9									x					
4104	2nd Possession of a Dangerous Weapon During a Crime (imitation, dw)	A										x				
4105	1st Possession of a Firearm by an Unauthorized Person (COV)	8								x						
4105	2nd Possession of a Firearm by an Unauthorized Person (other)	9									x					
4106	Negligent Discharge of Firearm	A										x				
4107	Alteration of a Firearm Identification Mark	A										x				
4111	Unlawful Sale of a Pistol	9									x					
4112	Unlawful Transfer of a Firearm	9									x					
4113	Sale of a Firearm Without a License	9									x					

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RCC §	RCC Offense Name	Class	1	2	3	4	5	6	7	8	9	A	B	C	D	E
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4115	Unlawful Sale of a Firearm by a Licensed Dealer	A										x				
4116	Use of False Information for Purchase or Licensure of a Firearm	A										x				
4120	Endangerment with a Firearm	9									x					
4201	Disorderly Conduct	D													x	
4202	Public Nuisance	D													x	
4203	Blocking a Public Way	D													x	
4204	Unlawful Demonstration	D													x	
4205	Breach of Home Privacy	C												x		
4206	1st Indecent Exposure	B											x			
4206	2nd Indecent Exposure	C												x		
4301	Rioting	A										x				
4302	Failure to Disperse	D													x	
4401	Prostitution	D													x	
4402	Enhanced Patronizing Prostitution	A										x				
4402	Patronizing Prostitution	D													x	
4403	Enhanced Trafficking in Commercial Sex	8								x						
4403	Trafficking in Commercial Sex	9									x					
4601	Contributing to the Delinquency of a Minor	B											x			
7-2502.01	1st Possession of an Unregistered Firearm, Destructive Device, or Ammunition	A										x				
7-2502.01	2nd Possession of an Unregistered Firearm, Destructive Device, or Ammunition (bullets)	B											x			
7-2502.15	Possession of a Stun Gun	B											x			
7-2502.17	Carrying an Air or Spring Gun	D													x	
7-2507.02	Enhanced Unlawful Storage of a Firearm	9									x					
7-2507.02	Unlawful Storage of a Firearm	A										x				
7-2509.06	Carrying a Pistol in an Unlawful Manner (holstering)	D													x	
16-1005A	Criminal Contempt for Violation of a Civil Protection Order	B											x			
16-1022	1st Parental Kidnapping	A										x				
16-1022	2nd Parental Kidnapping	B											x			
16-1022	3rd Parental Kidnapping	D													x	
16-1022	4th Parental Kidnapping	E														x
23-586	First Degree Failure to Appear after Release on Citation or Bench Warrant Bond	B											x			
23-586	Second Degree Failure to Appear after Release on Citation or Bench Warrant Bond	D													x	
23-1327	First Degree Failure to Appear in Violation of a Court Order	A										x				
23-1327	Second Degree Failure to Appear in Violation of a Court Order	C												x		
23-1329a	Criminal Contempt for Violation of a Release Condition	B											x			
24-241.05A	Violation of Work Release	C												x		

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25-1001	Possession of an Open Container of Alcohol in a Motor Vehicle	C												x		
48-904.01a	1st Possession of a Controlled Substance (Schedule I)	C												x		
48-904.01a	2nd Possession of a Controlled Substance (Any)	D													x	
48-904.01b	Enhanced 1st Trafficking of a Controlled Substance	6						x								
48-904.01b	1st Trafficking of a Controlled Substance	7							x							
48-904.01b	Enhanced 2nd Trafficking of a Controlled Substance	7							x							
48-904.01b	2nd Trafficking of a Controlled Substance	8								x						
48-904.01b	Enhanced 3rd Trafficking of a Controlled Substance	8								x						
48-904.01b	3rd Trafficking of a Controlled Substance	9									x					
48-904.01b	Enhanced 4th Trafficking of a Controlled Substance	9									x					
48-904.01b	4th Trafficking of a Controlled Substance	A										x				
48-904.01b	Enhanced 5th Trafficking of a Controlled Substance	A										x				
48-904.01b	5th Trafficking of a Controlled Substance	B											x			
48-904.01c	Enhanced 1st Trafficking of a Counterfeit Substance	6						x								
48-904.01c	1st Trafficking of a Counterfeit Substance	7							x							
48-904.01c	Enhanced 2nd Trafficking of a Counterfeit Substance	7							x							
48-904.01c	2nd Trafficking of a Counterfeit Substance	8								x						
48-904.01c	Enhanced 3rd Trafficking of a Counterfeit Substance	8								x						
48-904.01c	3rd Trafficking of a Counterfeit Substance	9									x					
48-904.01c	Enhanced 4th Trafficking of a Counterfeit Substance	9									x					
48-904.01c	4th Trafficking of a Counterfeit Substance	A										x				
48-904.01c	Enhanced 5th Trafficking of a Counterfeit Substance	A										x				
48-904.01c	5th Trafficking of a Counterfeit Substance	B											x			
48-904.10	Possession of Drug Manufacturing Paraphernalia	D													x	
48-904.11	Trafficking of Drug Paraphernalia	D													x	
48-904.12	Maintaining Methamphetamine Production	A										x				

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210	Accomplice (Same as Predicate)															
301	Attempt (50% of Predicate)															
302	Solicitation (50% of Predicate)															
303	Conspiracy (50% of Predicate)															
606	Misdemeanor Repeat Offender Enhancement											60D	60D	10D	10D	10D
606	Felony Repeat Offender Enhancement		6	6	4	4	2	2	1	1	180D					
607	Pretrial Release Penalty Enhancement		6	6	4	4	2	2	1	1	180D	60D	60D	10D	10D	10D
608	Hate Crime Enhancement (+1 Class)															
610	Abuse of Government Power Enhancement (+1 Class)															
1101	Enhanced 1st Murder	1	x													
1101	1st Murder	2		x												
1101	Enhanced 2nd Murder	3			x											
1301	Enhanced 1st Sex Assault	3			x											
1302	Enhanced 1st Sex Abuse of Minor	3			x											
1602	Enhanced Forced Commercial Sex	3			x											
1608	1st Commercial Sex with a Trafficked Person	3			x											
1101	2nd Murder	4				x										
1102	Enhanced Vol. Manslaughter	4				x										
1301	1st Sex Assault	4				x										
1301	Enhanced 2nd Sex Assault	4				x										
1302	1st Sex Abuse of Minor	4				x										
1302	Enhanced 2nd Sex Abuse of Minor	4				x										
1401	Enhanced First Degree Kidnapping	4				x										
1601	Enhanced Forced Labor	4				x										
1602	Forced Commercial Sex	4				x										
1605	Enhanced Sex Trafficking of a Minor or Adult Incapable of Consenting	4				x										
1608	2nd Commercial Sex with a Trafficked Person	4				x										
1102	Vol. Manslaughter	5					x									
1201	Enhanced 1st Robbery	5					x									
1301	2nd Sex Assault	5					x									
1302	2nd Sex Abuse of Minor	5					x									
1302	Enhanced 3rd Sex Abuse of Minor	5					x									
1302	Enhanced 4th Sex Abuse of Minor	5					x									
1401	First Degree Kidnapping	5					x									
1601	Forced Labor	5					x									
1603	Enhanced Trafficking in Labor or Services	5					x									
1604	Enhanced Trafficking in Forced Commercial Sex	5					x									
1605	Sex Trafficking of a Minor or Adult Incapable of Consenting	5					x									
2501	1st Arson	5					x									
1102	Enhanced Invol. Manslaughter	6						x								
1201	1st Robbery	6						x								

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1201	Enhanced 2nd Robbery (significant bodily injury by dang weapon)	6						x								
1202	1st Assault	6						x								
1202	Enhanced 2nd Assault	6						x								
1301	Enhanced 3rd Sex Assault	6						x								
1302	3rd Sex Abuse of Minor	6						x								
1302	4th Sex Abuse of Minor	6						x								
1302	Enhanced 5th Sex Abuse of Minor	6						x								
1401	Enhanced Second Degree Kidnapping	6						x								
1501	1st Criminal Abuse of Minor	6						x								
1503	1st Criminal Abuse of a Vulnerable Adult or Elderly Person	6						x								
1603	Trafficking in Labor or Services	6						x								
1604	Trafficking in Forced Commercial Sex	6						x								
1606	1st Benefitting from Human Trafficking	6						x								
2208	1st Financial Exploitation of a Vulnerable Adult or Elderly Person (\$500000+)	6						x								
2301	1st Extortion (\$500000+)	6						x								
48-904.01b	Enhanced 1st Trafficking of a Controlled Substance	6						x								
48-904.01c	Enhanced 1st Trafficking of a Counterfeit Substance	6						x								
1102	Invol. Manslaughter	7							x							
1201	Enhanced 2nd Robbery (all but significant bodily injury by dang weapon)	7							x							
1201	Enhanced 3rd Robbery (bodily injury by dang weapon)	7							x							
1202	2nd Assault	7							x							
1202	Enhanced 3rd Assault (weapon)	7							x							
1301	3rd Sex Assault	7							x							
1301	Enhanced 4th Sex Assault	7							x							
1302	5th Sex Abuse of Minor	7							x							
1302	Enhanced 6th Sex Abuse of Minor	7							x							
1303	1st Sexual Abuse by Exploitation	7							x							
1401	Second Degree Kidnapping	7							x							
1606	2nd Benefitting from Human Trafficking	7							x							
1807	1st Creating or Trafficking an Obscene Image of a Minor	7							x							
1809	1st Arranging a Live Sexual Performance of a Minor	7							x							
2101	1st Theft (\$500000+)	7							x							
2201	1st Fraud (\$500000+)	7							x							
2202	1st Payment Card Fraud (\$500000+)	7							x							
2205	1st Identity Theft (\$500000+)	7							x							
2208	2nd Financial Exploitation of a Vulnerable Adult or Elderly Person (\$50000+)	7							x							
2301	2nd Extortion (\$50000+)	7							x							
2402	1st Trafficking Stolen Property (\$500000+)	7							x							

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2501	2nd Arson	7							x							
2503	1st Criminal Damage to Property (\$500000+)	7							x							
2701	Enhanced 1st Burglary	7							x							
48-904.01b	1st Trafficking of a Controlled Substance	7							x							
48-904.01b	Enhanced 2nd Trafficking of a Controlled Substance	7							x							
48-904.01c	1st Trafficking of a Counterfeit Substance	7							x							
48-904.01c	Enhanced 2nd Trafficking of a Counterfeit Substance	7							x							
1103	Negligent Homicide	8								x						
1201	2nd Robbery	8								x						
1201	Enhanced 3rd Robbery (all but bodily injury by dang weapon)	8								x						
1202	Enhanced 3rd Assault (protected person)	8								x						
1202	Enhanced 4th Assault (weapon)	8								x						
1204	Enhanced 1st Criminal Threats	8								x						
1301	4th Sex Assault	8								x						
1302	6th Sex Abuse of Minor	8								x						
1303	2nd Sexual Abuse by Exploitation	8								x						
1308	First Degree Incest	8								x						
1402	Enhanced Criminal Restraint	8								x						
1403	Blackmail	8								x						
1501	2nd Criminal Abuse of Minor	8								x						
1502	1st Criminal Neglect of Minor	8								x						
1503	2nd Criminal Abuse of a Vulnerable Adult or Elderly Person	8								x						
1504	1st Criminal Neglect of a Vulnerable Adult or Elderly Person	8								x						
1607	1st Misuse of Documents in Furtherance of Human Trafficking	8								x						
1803	Enhanced 1st Voyeurism	8								x						
1807	2nd Creating or Trafficking an Obscene Image of a Minor	8								x						
1808	1st Possession of an Obscene Image of a Minor	8								x						
1809	2nd Arranging a Live Sexual Performance of a Minor	8								x						
1810	1st Attending or Viewing a Live Sexual Performance of a Minor	8								x						
2101	2nd Theft (\$50000+)	8								x						
2201	2nd Fraud (\$50000+)	8								x						
2202	2nd Payment Card Fraud (\$50000+)	8								x						
2204	1st Forgery	8								x						
2205	2nd Identity Theft (\$50000+)	8								x						
2208	3rd Financial Exploitation of a Vulnerable Adult or Elderly Person (\$5000+)	8								x						
2301	3rd Extortion (\$5000+)	8								x						
2401	1st Possession of Stolen Property (\$500000+)	8								x						
2402	2nd Trafficking Stolen Property (\$50000+)	8								x						
2503	2nd Criminal Damage to Property (\$50000+)	8								x						
2701	1st Burglary	8								x						

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2701	Enhanced 2nd Burglary	8								x						
3401	1st Escape from Correctional Facility or Officer	8								x						
4101	1st Possession of a Prohibited Weapon or Accessory (assault weapon)	8								x						
4102	1st Carrying a Dangerous Weapon (firearm school zone)	8								x						
4103	1st Possession of a Dangerous Weapon With Intent to Commit Crime (explosive)	8								x						
4105	1st Possession of a Firearm by an Unauthorized Person (COV)	8								x						
4403	Enhanced Trafficking in Commercial Sex	8								x						
48-904.01b	2nd Trafficking of a Controlled Substance	8								x						
48-904.01b	Enhanced 3rd Trafficking of a Controlled Substance	8								x						
48-904.01c	2nd Trafficking of a Counterfeit Substance	8								x						
48-904.01c	Enhanced 3rd Trafficking of a Counterfeit Substance	8								x						
1201	3rd Robbery	9									x					
1202	3rd Assault	9									x					
1204	1st Criminal Threats	9									x					
1204	Enhanced 2nd Criminal Threats	9									x					
1305	Enticing a Minor Into Sexual Conduct	9									x					
1306	Arranging for Sexual Conduct with a Minor	9									x					
1307	1st Nonconsensual Sexual Conduct	9									x					
1501	3rd Criminal Abuse of Minor	9									x					
1503	3rd Criminal Abuse of a Vulnerable Adult or Elderly Person	9									x					
1607	2nd Misuse of Documents in Furtherance of Human Trafficking	9									x					
1801	Enhanced Stalking	9									x					
1802	Enhanced Electronic Stalking	9									x					
1803	1st Voyeurism	9									x					
1804	Enhanced Unauthorized Disclosure of Sexual Recordings	9									x					
1808	2nd Possession of an Obscene Image of a Minor	9									x					
1810	2nd Attending or Viewing a Live Sexual Performance of a Minor	9									x					
2101	3rd Theft (\$5000+)(motor vehicle)	9									x					
2201	3rd Fraud (\$5000+)	9									x					
2202	3rd Payment Card Fraud (\$5000+)	9									x					
2203	1st Check Fraud (\$5000+)	9									x					
2204	2nd Forgery	9									x					
2205	3rd Identity Theft (\$5000+)	9									x					
2208	4th Financial Exploitation of a Vulnerable Adult or Elderly Person (\$500+)	9									x					
2301	4th Extortion (\$500+)	9									x					
2401	2nd Possession of Stolen Property (\$50000+)	9									x					
2402	3rd Trafficking Stolen Property (\$5000+)	9									x					

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2403	1st Alteration of a Motor Vehicle Identification Number	9									x					
2501	3rd Arson	9									x					
2503	3rd Criminal Damage to Property (\$5000+)	9									x					
2701	2nd Burglary	9									x					
2701	Enhanced 3rd Burglary	9									x					
3201	1st Impersonation of an Official	9									x					
3403	1st Correctional Facility Contraband	9									x					
4101	2nd Possession of a Prohibited Weapon or Accessory (bump stock)	9									x					
4102	2nd Carrying a Dangerous Weapon (firearm)	9									x					
4104	1st Possession of a Dangerous Weapon During a Crime (firearm)	9									x					
4105	2nd Possession of a Firearm by an Unauthorized Person (other)	9									x					
4111	Unlawful Sale of a Pistol	9									x					
4112	Unlawful Transfer of a Firearm	9									x					
4113	Sale of a Firearm Without a License	9									x					
4120	Endangerment with a Firearm	9									x					
4403	Trafficking in Commercial Sex	9									x					
7-2507.02	Enhanced Unlawful Storage of a Firearm	9									x					
48-904.01b	3rd Trafficking of a Controlled Substance	9									x					
48-904.01b	Enhanced 4th Trafficking of a Controlled Substance	9									x					
48-904.01c	3rd Trafficking of a Counterfeit Substance	9									x					
48-904.01c	Enhanced 4th Trafficking of a Counterfeit Substance	9									x					
1202	Enhanced 4th Assault (protected person)	A										x				
1304	Sexually Suggestive Conduct with a Minor	A										x				
1307	2nd Nonconsensual Sexual Conduct	A										x				
1308	Second Degree Incest	A										x				
1402	Criminal Restraint	A										x				
1502	2nd Criminal Neglect of Minor	A										x				
1504	2nd Criminal Neglect of a Vulnerable Adult or Elderly Person	A										x				
1801	Stalking	A										x				
1802	Electronic Stalking	A										x				
1803	Enhanced 2nd Voyeurism	A										x				
2101	4th Theft (\$500+)(person)	A										x				
2103	Unauthorized Use of Motor Vehicle	A										x				
2201	4th Fraud (\$500+)	A										x				
2202	4th Payment Card Fraud (\$500+)	A										x				
2203	2nd Check Fraud (\$500+)	A										x				
2204	3rd Forgery	A										x				
2205	4th Identity Theft (\$500+)	A										x				
2210	1st Trademark Counterfeiting	A										x				

Appendix E. Table of RCC Specific Offense Classifications (Ordered by Severity)

RCC §	RCC Offense Name	Class	1	2	3	4	5	6	7	8	9	A	B	C	D	E
			45Y-540M	40Y-480M	30Y-360M	24Y-288M	18Y-216M	12Y-144M	8Y-96M	4Y-48M	2Y-24M	1Y-12M	0Y-180D	0Y-60D	0Y-10D	0Y-0D
2401	3rd Possession of Stolen Property (\$5000+)	A										x				
2402	4th Trafficking Stolen Property (\$500+)	A										x				
2502	Reckless Burning	A										x				
2503	4th Criminal Damage to Property (\$500+)	A										x				
2701	3rd Burglary	A										x				
3401	2nd Escape from Correctional Facility or Officer	A										x				
3403	2nd Correctional Facility Contraband	A										x				
4103	2nd Possession of a Dangerous Weapon With Intent to Commit Crime (firearm, imitation, dw)	A										x				
4104	2nd Possession of a Dangerous Weapon During a Crime (imitation, dw)	A										x				
4106	Negligent Discharge of Firearm	A										x				
4107	Alteration of a Firearm Identification Mark	A										x				
4115	Unlawful Sale of a Firearm by a Licensed Dealer	A										x				
4116	Use of False Information for Purchase or Licensure of a Firearm	A										x				
4301	Rioting	A										x				
4402	Enhanced Patronizing Prostitution	A										x				
7-2502.01	1st Possession of an Unregistered Firearm, Destructive Device, or Ammunition	A										x				
7-2507.02	Unlawful Storage of a Firearm	A										x				
16-1022	1st Parental Kidnapping	A										x				
23-1327	First Degree Failure to Appear in Violation of a Court Order	A										x				
48-904.01b	4th Trafficking of a Controlled Substance	A										x				
48-904.01b	Enhanced 5th Trafficking of a Controlled Substance	A										x				
48-904.01c	4th Trafficking of a Counterfeit Substance	A										x				
48-904.01c	Enhanced 5th Trafficking of a Counterfeit Substance	A										x				
48-904.12	Maintaining Methamphetamine Production	A										x				
1202	4th Assault	B											x			
1204	2nd Criminal Threats	B											x			
1204	Enhanced 3rd Criminal Threats	B											x			
1205	Enhanced 1st Offensive Physical Contact	B											x			
1502	3rd Criminal Neglect of Minor	B											x			
1504	3rd Criminal Neglect of a Vulnerable Adult or Elderly Person	B											x			
1803	2nd Voyeurism	B											x			
1804	Unauthorized Disclosure of Sexual Recordings	B											x			
1806	Distribution of an Obscene Image to a Minor	B											x			
2208	5th Financial Exploitation of a Vulnerable Adult or Elderly Person (Any)	B											x			
2301	5th Extortion (Any)	B											x			
2401	4th Possession of Stolen Property (\$500+)	B											x			
2403	2nd Alteration of a Motor Vehicle Identification Number	B											x			

Appendix E. Table of RCC Specific Offense Classifications (Ordered by Severity)

RCC §	RCC Offense Name	Class	1	2	3	4	5	6	7	8	9	A	B	C	D	E
			45Y-540M	40Y-480M	30Y-360M	24Y-288M	18Y-216M	12Y-144M	8Y-96M	4Y-48M	2Y-24M	1Y-12M	0Y-180D	0Y-60D	0Y-10D	0Y-0D
2601	1st Trespass	B											x			
3201	2nd Impersonation of an Official	B											x			
3402	Tampering with a Detection Device	B											x			
4102	3rd Carrying a Dangerous Weapon (dang weap)	B											x			
4206	1st Indecent Exposure	B											x			
4601	Contributing to the Delinquency of a Minor	B											x			
7-2502.01	2nd Possession of an Unregistered Firearm, Destructive Device, or Ammunition (bullets)	B											x			
7-2502.15	Possession of a Stun Gun	B											x			
16-1005A	Criminal Contempt for Violation of a Civil Protection Order	B											x			
16-1022	2nd Parental Kidnapping	B											x			
23-586	First Degree Failure to Appear after Release on Citation or Bench Warrant Bond	B											x			
23-1329a	Criminal Contempt for Violation of a Release Condition	B											x			
48-904.01b	5th Trafficking of a Controlled Substance	B											x			
48-904.01c	5th Trafficking of a Counterfeit Substance	B											x			
1204	3rd Criminal Threats	C												x		
1205	1st Offensive Physical Contact	C												x		
1205	Enhanced 2nd Offensive Physical Contact	C												x		
1805	Distribution of an Obscene Image	C												x		
2101	5th Theft (Any)	C												x		
2105	First Unlawful Creation or Possession Recording	C												x		
2201	5th Fraud (Any)	C												x		
2202	5th Payment Card Fraud (Any)	C												x		
2203	3rd Check Fraud (Any)	C												x		
2205	5th Identity Theft (Any)	C												x		
2207	1st Unlawful Labeling of Recording	C												x		
2210	2nd Trademark Counterfeiting	C												x		
2402	5th Trafficking Stolen Property (Any)	C												x		
2503	5th Criminal Damage to Property (Any)	C												x		
2601	2nd Trespass	C												x		
3202	Misrepresentation as a District of Columbia Entity	C												x		
3401	3rd Escape from Correctional Facility or Officer	C												x		
4205	Breach of Home Privacy	C												x		
4206	2nd Indecent Exposure	C												x		
23-1327	Second Degree Failure to Appear in Violation of a Court Order	C												x		
24-241.05A	Violation of Work Release	C												x		
25-1001	Possession of an Open Container of Alcohol in a Motor Vehicle	C												x		
48-904.01a	1st Possession of a Controlled Substance (Schedule I)	C												x		
1205	2nd Offensive Physical Contact	D													x	
2102	Unauthorized Use of Property	D													x	

First Draft of Report #69 - Appendix E. Table of RCC Specific Offense Classifications (Ordered by Severity)

RCC §	RCC Offense Name	Class	1	2	3	4	5	6	7	8	9	A	B	C	D	E
			45Y-540M	40Y-480M	30Y-360M	24Y-288M	18Y-216M	12Y-144M	8Y-96M	4Y-48M	2Y-24M	1Y-12M	0Y-180D	0Y-60D	0Y-10D	0Y-0D
2104	Shoplifting	D													x	
2105	Second Unlawful Creation or Possession Recording	D													x	
2106	Unlawful Operation of Recording Device in Motion Picture Theater	D													x	
2207	2nd Unlawful Labeling of Recording	D													x	
2401	5th Possession of Stolen Property (Any)	D													x	
2404	Alteration of Bicycle Identification Number	D													x	
2504	Criminal Graffiti	D													x	
2601	3rd Trespass	D													x	
2702	Possession Tools to Commit Property Crime	D													x	
4201	Disorderly Conduct	D													x	
4202	Public Nuisance	D													x	
4203	Blocking a Public Way	D													x	
4204	Unlawful Demonstration	D													x	
4302	Failure to Disperse	D													x	
4401	Prostitution	D													x	
4402	Patronizing Prostitution	D													x	
7-2502.17	Carrying an Air or Spring Gun	D													x	
7-2509.06	Carrying a Pistol in an Unlawful Manner (holstering)	D													x	
16-1022	3rd Parental Kidnapping	D													x	
23-586	Second Degree Failure to Appear after Release on Citation or Bench Warrant Bond	D													x	
48-904.01a	2nd Possession of a Controlled Substance (Any)	D													x	
48-904.10	Possession of Drug Manufacturing Paraphernalia	D													x	
48-904.11	Trafficking of Drug Paraphernalia	D													x	
16-1022	4th Parental Kidnapping	E														x

3. Updated statutory text and commentary for subsection (e) penalty provisions of RCC § 22E-1201, Robbery.

Updated statutory text is as follows, with changes in red ink and deleted text in strikethrough.

RCC § 22E-1201. Robbery.

- (a) *First degree.* An actor commits first degree robbery when that actor:
- (1) Knowingly takes or exercises control over the property of another that the complainant possesses within the complainant's immediate physical control by:
 - (A) Causing bodily injury to the complainant or another person physically present;
 - (B) Communicating, explicitly or implicitly, that the actor immediately will cause the complainant or another person physically present to suffer bodily injury, a sexual act, a sexual contact, confinement, or death;
 - (C) Applying physical force that moves or immobilizes another person present; or
 - (D) Removing property from the hand or arms of the complainant;
 - (2) With intent to deprive the complainant of the property; and
 - (3) In the course of the robbery, recklessly causes serious bodily injury another person, other than an accomplice.
- (b) *Second degree.* An actor commits second degree robbery when that actor:
- (1) Knowingly takes or exercises control over the property of another that the complainant possesses within the complainant's immediate physical control by:
 - (A) Causing bodily injury to another person physically present;
 - (B) Communicating, explicitly or implicitly, that the actor immediately will cause the complainant or another person present to suffer bodily injury, a sexual act, a sexual contact, confinement, or death;
 - (C) Applying physical force that moves or immobilizes another person present; or
 - (D) Removing property from the hand or arms of the complainant
 - (2) With intent to deprive the complainant of the property; and
 - (3) Either:
 - (A) In the course of the robbery, recklessly causes significant bodily injury to another person, other than an accomplice; or
 - (B) In fact:
 - (I) The property is a motor vehicle; or
 - (II) The property has a value of \$5,000 or more.
- (c) *Third degree.* An actor commits third degree robbery when that actor:

- (1) Knowingly takes or exercises control over the property of another that the complainant possesses within the complainant's immediate physical control by:
 - (A) Causing bodily injury to the complainant or another person present;
 - (B) Communicating to the complainant, explicitly or implicitly, that the actor immediately will cause the complainant or another person present to suffer bodily injury, a sexual act, a sexual contact, confinement, or death;
 - (C) Applying physical force that moves or immobilizes another person present; or
 - (D) Removing property from the hand or arms of the complainant;
- (2) With intent to deprive the complainant of the property.
- (d) *Affirmative defense.* It is an affirmative defense to criminal liability under this section that, in fact, the actor reasonably believes that an owner of the property gives effective consent to the actor to take or exercise control over the property.
- (e) *Penalties.*
 - (1) First degree robbery is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) Second degree robbery is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (3) Third degree robbery is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (4) *Penalty enhancements.* The penalty classification for first, ~~second, and third~~ degree robbery is increased in severity by one ~~penalty~~ class when ~~the actor a person~~ commits the offense:
 - (A) Reckless ~~as to the fact~~ that the complainant is a protected person; or
 - (B) By using or displaying what is, in fact, a dangerous weapon or imitation dangerous weapon.
 - (5) *Penalty enhancements.* The penalty classification of ~~second and third degree robbery is increased by:~~
 - (A) ~~One class when the actor commits the offense:~~
 - (I) ~~Reckless as to the fact that the complainant is a protected person; or~~
 - (II) ~~Under sub-paragraphs (b)(3)(B), (c)(1)(B), (c)(1)(C), or (c)(1)(D) by using or displaying what is, in fact, a dangerous weapon or imitation dangerous weapon; or~~
 - (B) ~~Two classes when the actor commits the offense under sub-paragraph (b)(3)(A) or sub-paragraph (c)(1)(A) by recklessly displaying or using what, in fact, is a dangerous weapon.~~
- (f) *Definitions.* The terms "intent," "knowingly," "purpose," and "reckless" have the meanings specified in RCC § 22E-206; the term "in fact" has the meaning specified in RCC § 22E-207; the terms "actor," "bodily injury," "dangerous weapon," "motor vehicle," "protected person," "serious bodily injury," and "significant bodily injury" have the meanings specified in RCC § 22E-701.

Updated commentary to the RCC robbery statute is as follows, with changes in red ink and deleted text in strikethrough. Only relevant excerpts (regarding subsection (e) penalty provisions) are provided.

Add to Explanatory Note.

... Paragraph (e)(4) provides two penalty enhancements **for first degree robbery**. If the government proves the presence of at least one element listed under paragraph (e)(4), the penalty classification for first, ~~second, or third~~ degree robbery may be increased in severity by one penalty class. These penalty enhancements may apply in addition to any penalty enhancements authorized by RCC Chapter 6.

Subparagraph (e)(4)(A) specifies as a penalty enhancement that the actor was reckless as to whether the complainant is a protected person. Reckless is defined at RCC § 22E-206, and requires that the actor was aware of a substantial risk that the complainant was a protected person, and that the risk is of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard is clearly blameworthy. The term "protected person" is defined in RCC § 22E-701.¹

Subparagraph (e)(4)(B) specifies as a penalty enhancement that the actor committed robbery by using or displaying a dangerous weapon or imitation dangerous weapon. This requires that the actor consciously disregarded a substantial risk of displaying or using a dangerous weapon or imitation weapon.² The terms "dangerous weapon" and "imitation dangerous weapon" are defined under RCC § 22E-701. The word "by" requires that the weapon or imitation weapon must have facilitated the robbery. This enhancement does not apply if the actor merely possessed a weapon or imitation weapon in manner that did not facilitate the robbery. Subparagraph (e)(4)(B) uses the term "in fact," which specifies that strict liability applies, and there is no culpable mental state as to whether the item used in the robbery was a dangerous weapon or imitation dangerous weapon. This penalty enhancement requires that the actor used or displayed the weapon or imitation weapon, but does not require that the weapon actually caused injury to the complainant.³

¹ RCC § 22E-701 "Protected person" means a person who is:

- (A) Under 18 years of age old, and when, in fact, the defendant actor is at least 18 years of age or older old and at least 2 4 years older than the other person complainant;
- (B) 65 years old or older, when, in fact, the actor is under the age of 65 years and at least 10 years younger than the complainant;
- (C) A vulnerable adult;
- (D) A law enforcement officer, while in the course of official duties;
- (E) A public safety employee while in the course of official duties;
- (F) A transportation worker, while in the course of official duties; or
- (G) A District official, while in the course of official duties.

² In many cases, the actor may knowingly or purposely use or display a dangerous weapon or imitation dangerous weapon. Under RCC § 22E-206, either of these culpable mental states satisfies the recklessness requirement for this element.

³ For example, if a defendant displays a gun during a robbery and the gun's display causes a complainant to step back, trip, fall, and suffer an injury from the fall, the weapon penalty enhancement would be satisfied even though there was no gunshot.

Paragraph (e)(5) provides two penalty enhancements for second and third degree robbery that are the same as under paragraph (e)(4), except that there are more severe penalties for committing the robbery by inflicting a bodily injury or significant bodily injury by recklessly displaying or using what, in fact, is a dangerous weapon. To receive the higher (two penalty class) enhancement the dangerous weapon must directly or indirectly⁴ cause the bodily injury or significant bodily injury to the complainant. If the government proves the presence of at least one element listed under paragraph (e)(5)(A), the penalty classification for second and third degree robbery may be increased in severity by one penalty class. If the government proves the presence of the element listed under paragraph (e)(5)(B), the penalty classification for second and third degree robbery may be increased in severity by two penalty classes. The increased penalty reflects the greater risk of more serious injury when actually using a dangerous weapon against another person.⁵ These penalty enhancements may apply in addition to any penalty enhancements authorized by RCC Chapter 6.

Add to Relation to Current District Law:

... Third, the revised robbery statute includes a penalty enhancement for using or displaying a dangerous weapon or imitation dangerous weapon, and replaces the enhanced penalties authorized under current D.C. Code § 22-4502, when committing robbery “while armed” or “having readily available” a dangerous weapon or imitation dangerous weapon. ~~Replacing Current D.C. Code § 22-4502 with the weapon penalty enhancement in the revised robbery offense change current District law provides enhanced penalties for committing robbery (and other specified offenses) “when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon”.~~⁶ Existing District case law on D.C. Code § 22-4502 holds that the penalty enhancements are authorized if the defendant either had “actual physical possession of [a weapon]”;⁷ or if the weapon was merely in “close proximity or easily accessible during the commission of the underlying [offense],”⁸ provided that the defendant also constructively possessed the weapon.⁹ There is no further requirement under current law that the defendant actually used the weapon or caused any injury.¹⁰ By contrast, in the RCC

⁴ For example, if a defendant displays a gun during a robbery and the gun’s display causes a complainant to step back, trip, fall, and suffer an injury from the fall, the weapon penalty enhancement would be satisfied even though there was no gunshot.

⁵ Similarly, a more severe penalty enhancement is provided for assault by recklessly displaying or using what, in fact, is a dangerous weapon or imitation dangerous weapon. RCC § 22E-1202(h)(6).

⁶ D.C. Code § 22-4502.

⁷ *Johnson v. United States*, 686 A.2d 200, 205 (D.C. 1996).

⁸ *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).

⁹ *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.”).

¹⁰ 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).

robbery offense the defendant must actually “use or display” a dangerous weapon or imitation dangerous weapon to receive the penalty enhancement. Where the actor inflicts a bodily injury or significant bodily injury by “use or display” of a dangerous weapon, the revised statute provides a more serious (two class) penalty enhancement than when the use or display of the dangerous weapon is otherwise involved in the offense.¹¹ Merely being armed with or having readily available, a dangerous weapon or imitation dangerous weapon would not be sufficient for the penalty enhancement under the revised statute.¹² Including an enhancement for using or displaying a dangerous weapon or imitation dangerous weapon improves the proportionality of punishment both by matching more severe penalties to those robberies in which a weapon is actually displayed or used, and tailoring the effects of the weapon enhancement instead of relying on a separate statute that generally enhances multiple offenses and levels of robbery with the same penalty.

¹¹ For example, committing the robbery by brandishing a dangerous weapon (but not using it to inflict a bodily injury or significant bodily injury) results in only a one-class enhancement.

¹² Note that per the revised possession of a dangerous weapon during a crime offense, RCC § 22E-4104, the revised criminal code will still provide for additional punishments when committing a robbery while possessing, but not using or displaying, a dangerous weapon.

4. New statutory text and commentary for revision of D.C. Code 24-403.01 provisions regarding supervised release;

New statutory text is as follows, with changes in red ink and deleted text in strikethrough.

D.C. Code § 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

- (a) For any felony committed on or after August 5, 2000, the court shall impose a sentence that:
 - (1) Reflects the seriousness of the offense and the criminal history of the offender;
 - (2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and
 - (3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.
- (b)
 - (1) If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section, the court shall impose an adequate period of supervision (“supervised release”) to follow release from the imprisonment or commitment.
 - (2) If the court imposes a sentence for a felony offense of more than one year, the court shall impose a term of supervised release of:
 - (A) Not more than 5 Five years, if the maximum term of imprisonment authorized for the offense is 24 25 years or more; or
 - (B) Not more than 3 Three years, if the maximum term of imprisonment authorized for the offense is 8 years or more than one year, but less than 24 25 years; or
 - (C) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than eight years.
 - (3) [Reserved] If the court imposes a sentence of one year or less, the court shall impose a term of supervised release of:
 - (A) ~~Not more than 5 years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or~~
 - (B) ~~Not more than 3 years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.~~
 - (4) In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of:
 - (A) Not more than 10 years; or
 - (B) Not more than life if the person is required to register for life.

- (5) The term of supervised release commences on the day the offender is released from imprisonment, and runs concurrently with any federal, state, or local term of probation, parole, or supervised release for another offense to which the offender is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the offender is imprisoned in connection with a conviction for a federal, state, or local crime unless the period of imprisonment is less than 30 days.
 - (6) Offenders on supervised release shall be subject to the authority of the United States Parole Commission until completion of the term of supervised release. The Parole Commission shall have and exercise the same authority as is vested in the United States District Courts by 18 U.S.C. § 3583(d)-(i), except that:
 - (A) The procedures followed by the Parole Commission in exercising such authority shall be those set forth in chapter 311 of title 18 of the United States Code; and
 - (B) An extension of a term of supervised release under 18 U.S.C. § 3583(e)(2) may be ordered only by the court upon motion from the Parole Commission.
 - (7) An offender whose term of supervised release is revoked may be imprisoned for a period of:
 - (A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is ~~40 years or more life or the offense is specifically designated as a Class A felony~~;
 - (B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is ~~24 25~~ years or more, but less than ~~40 years life and the offense is not specifically designated as a Class A felony~~;
 - (C) Not more than 2 years, if the maximum term of imprisonment authorized for the offense is ~~8 5~~ years or more, but less than ~~24 25~~ years; or
 - (D) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than ~~8 5~~ years.
- (b-1) ~~If the maximum term of imprisonment authorized for an offense is a term of years, the term of imprisonment or commitment imposed by the court shall not exceed the maximum term of imprisonment authorized for the offense less the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) of this section. If the maximum term of imprisonment authorized for the offense is up to life or if an offense is specifically designated as a Class A felony, †~~The maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) shall not be deducted from the maximum term of imprisonment or commitment authorized for such offense.
- (b-2)
- (1) ~~The court may impose a sentence in excess of 60 years for first degree murder or first degree murder while armed, 40 years for second degree~~

~~murder or second degree murder while armed, or 30 years for armed carjacking, first degree sexual abuse, first degree sexual abuse while armed, first degree child sexual abuse or first degree child sexual abuse while armed, only if:~~

- ~~(A) Thirty days prior to trial or the entry of a plea of guilty, the prosecutor files an indictment or information with the clerk of the court and a copy of such indictment or information is served on the person or counsel for the person, stating in writing one or more aggravating circumstances to be relied upon; and~~
- ~~(B) One or more aggravating circumstances exist beyond a reasonable doubt.~~

~~(2) Aggravating circumstances for first degree murder are set forth in § 22-2104.01. Aggravating circumstances for first degree sexual abuse and first degree child sexual abuse are set forth in § 22-3020. In addition, for all offenses, aggravating circumstances include:~~

- ~~(A) The offense was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A));~~
- ~~(B) The offense was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding or was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;~~
- ~~(C) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;~~
- ~~(D) The offense was especially heinous, atrocious, or cruel;~~
- ~~(E) The offense involved a drive-by or random shooting;~~
- ~~(F) The offense was committed after substantial planning;~~
- ~~(G) The victim was less than 12 years old or more than 60 years old or vulnerable because of mental or physical infirmity; or~~
- ~~(H) Except where death or serious bodily injury is an element of the offense, the victim sustained serious bodily injury as a result of the offense.~~

~~(3) This section does not limit the imposition of a maximum sentence of up to life imprisonment without possibility of release authorized by § 22-1804a; § 22-2104.01; § 22-2106; and § 22-3020.~~

(c)

- (1) Except as provided under paragraph (2) of this subsection, a sentence under this section of imprisonment, or of commitment pursuant to § 24-903, shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law.
- (2) Notwithstanding any other provision of law, if the person committed the offense for which he or she is being sentenced under this section while under 18 years of age:
 - (A) The court may issue a sentence less than the minimum term otherwise required by law; and

- (B) The court shall not impose a sentence of life imprisonment without the possibility of parole or release.
- (c-1) A person sentenced under this section to imprisonment, or to commitment pursuant to § 24-903, shall serve the term of imprisonment or commitment specified in the sentence, less any time credited toward service of the sentence under subsection (d) of this section and subject to § 24-403.03, if applicable.
- (d) Notwithstanding any other law, a person sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section for any offense may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).
- (d-1)
- (1) A person sentenced to imprisonment under this section for a nonviolent offense may receive up to a one-year reduction in the term the person must otherwise serve if the person successfully completes a substance abuse treatment program in accordance with 18 U.S.C. § 3621(e)(2).
 - (2) For the purposes of this subsection, the term “nonviolent offense” means any crime other than those included within the definition of “crime of violence” in § 23-1331(4).
- ~~(e) The sentence imposed under this section on a person who was over 18 years of age at the time of the offense and was convicted of assault with intent to commit first or second degree sexual abuse or child sexual abuse in violation of § 22-401, or of armed robbery in violation of § 22-4502, shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-4501, providing for the control of dangerous weapons in the District of Columbia. The sentence imposed under this section on a person who was over 18 years of age at the time of the offense and was convicted of first or second degree sexual abuse or child sexual abuse in violation of § 22-3002, § 22-3003, or § 22-3008 through § 22-3010, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined.~~
- ~~(f) The sentence imposed under this section shall not be less than 1 year for a person who was over 18 years of age at the time of the offense and was convicted of:~~
- ~~(1) Assault with a dangerous weapon on a police officer in violation of § 22-405, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;~~
 - ~~(2) Illegal possession of a pistol in violation of § 22-4503, occurring after the person has been convicted of violating that section; or~~
 - ~~(3) Possession of the implements of a crime in violation of § 22-2501, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction.~~
- ~~(g) 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.~~

New commentary to the RCC authorized disposition statute is as follows.

RCC § 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

Explanatory Note. The RCC amendments to the statute affect a limited number of penalty-related provisions and do not contravene Congressional language in the criminal justice provisions of the Revitalization Act.¹

Paragraph (b)(2) makes the length of supervised release imposed at sentencing a matter of judicial discretion, although the court must impose a term of supervised release. The maximum length of supervised release that may be imposed varies by the severity of the underlying offense (measured by maximum authorized sentence length). A court may impose a maximum of five years supervised release if the term of imprisonment authorized for the offense is 24 years or more, three years if the term of imprisonment authorized for the offense is eight years or more but less than 24 years, or 1 year if the term of imprisonment authorized for the offense is more than one year but less than 8 years. The paragraph only applies to sentencing for felony offenses.

Paragraph (b)(7) sets the maximum term of imprisonment that may be imposed following revocation of supervised release. Sub-paragraph (b)(7)(A) provides for a maximum of 5 years imprisonment following revocation when the offense carries a maximum of 40 years or more. Sub-paragraph (b)(7)(B) provides for a maximum of 3 years imprisonment following revocation when the offense carries at least 24 years or more but less than 40 years imprisonment. Sub-paragraph (b)(7)(C) provides for a maximum of 2 years imprisonment following revocation when the offense carries at least 8 years or more but less than 24 years imprisonment. Sub-paragraph (b)(7)(D) provides for a maximum of 1 year imprisonment following revocation when the offense carries less than 8 years imprisonment.

Subsection (b-1) clarifies that, for any offense, the maximum term of imprisonment authorized upon revocation of supervised release under subsection (b)(7) shall not be deducted from the maximum term of imprisonment or commitment authorized for such offense.

Relation to Current District Law. The revised § 24-403.01 statute clearly changes current District law in five main ways.

¹ National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, 111 Stat. 712 (1997) §§ 11201-11282. Notably, section 11214 of the Revitalization Act required the District to “enact in whole the recommendations of the [Truth in Sentencing] Commission,” and the recommendations of the Commission included language specifying statutory minimums and maximums for various offenses currently codified in D.C. Code § 24-403.01(e) and (f) that are eliminated by the RCC changes to the statute. However, the Commission’s inclusion of those statutory minimums and maximums was not required by the Revitalization Act and the Commission itself stated that its intent in inclusion of those minimums and maximums was to: “preserve[] existing maxima and minima, *subject to any future changes that may be made to the District of Columbia Code*” (emphasis added). See D.C. Truth in Sentencing Commission, *Formal Recommendations* (January 31, 1998) at 8. Consequently, elimination of current D.C. Code § 24-403.01(e) and (f) does not contravene the requirements of the Revitalization Act. Other provisions of D.C. Code § 24-403.01 revised by the RCC are statutory provisions enacted by the D.C. Council on its own authority, not pursuant to the Revitalization Act.

First, the revised statute provides the court discretion, up to the specified maximum, regarding how much supervisory release to require. Current D.C. Code § 24-403.01(b)(2) provides that, when the court imposes a sentence of more than one year, the court must impose either 5 or 3 years supervised release depending on whether the offense at issue carries an authorized penalty of 25 years or more imprisonment or is a less serious felony. Current D.C. Code § 24-403.01(b)(3) authorizes the same periods of supervised release based on the same threshold of 25 years, however subparagraph (b)(3) applies only when the court imposes a sentence of one year or less and the period of supervised release is discretionary. In contrast, the RCC statute provides the court the ability to determine the length of supervised release for all felony sentences, whether or not the imprisonment sentence is more than 1 year. This approach allows judges to better tailor the need for supervised release to each particular offender and is consistent with the broader approach in the RCC to provide greater judicial discretion to impose lesser sanctions when doing so is sufficient to serve the purposes of supervision. As in the current D.C. Code §§ 24-403.01(b)(2) and (b)(3), some period of supervised release must still be imposed under the revised language, but the period can be any amount up to the specified maximum. This approach follows the recent updates to the Model Penal Code² and is generally consistent with federal law.³ With the elimination of mandatory terms of supervised release, there remains no relevant distinction between D.C. Code §§ 24-403.01(b)(2) and (b)(3), and the latter is eliminated as duplicative. This change improves the clarity, consistency, and proportionality of the revised statutes.

Second, the revised statute provides a third, lower maximum term of supervised release for when the court imposes a sentence for a low felony crime. Current D.C. Code §§ 24-403.01(b)(2) and (b)(3) mandate or authorize imposition of up to either 5 or 3 years supervised release depending on whether the offense at issue carries an authorized penalty of 25 years or more imprisonment or is a less serious felony. In contrast, the RCC statute distinguishes three levels of severity in underlying offenses instead of two, and authorizes a 1 year maximum term of supervised release for low felonies. It is unclear why the current D.C. Code does not distinguish low felonies from the much more serious conduct involved in crimes of ten years or more. The RCC is generally consistent with federal law in

² See, e.g., *Model Penal Code: Sentencing* (Am. Law Inst., 2017) § 6.09, Postrelease Supervision (“(1) When the court sentences an offender to prison, the court may also impose a term of postrelease supervision. (2) The purposes of postrelease supervision are to hold offenders accountable for their criminal conduct, promote their rehabilitation and reintegration into law-abiding society, reduce the risks that they will commit new offenses, and address their needs for housing, employment, family support, medical care, and mental-health care during their transition from prison to the community. (3) The court shall not impose postrelease supervision unless necessary to further one or more of the purposes in subsection (2). (4) When deciding whether to impose postrelease supervision, the length of a supervision term, and what conditions of supervision to impose, the court should consult reliable risk-and-needs-assessment instruments, when available, and shall apply any relevant sentencing guidelines.”).

³ 18 U.S.C. § 3583 (a), (c) (“(a) In General.—The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).”; “(c) Factors To Be Considered in Including a Term of Supervised Release.—

The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).”).

providing a three-level distinction in felonies meriting supervised release.⁴ This change improves the proportionality of the revised statutes.

Third, the revised statute updates the thresholds for the severity of offenses (measured in years) that trigger different terms of supervised release or, upon revocation of supervised release, imprisonment. Under current D.C. Code §§ 24-403.01(b)(2) and (b)(3) the thresholds for different terms of supervised release turn on whether the offense of conviction carries an authorized a penalty of 25 years or more imprisonment. Under current D.C. Code § 24-403.01(b)(7) the different terms of supervised release turn on whether the offense of conviction meets one of three thresholds: it is a designated “Class A felony” or carries up to a life sentence; it carries an authorized penalty of 25 years or more; or it carries an authorized penalty of 5 years or more imprisonment. In contrast, the RCC statute adjusts the statutory maximums for these thresholds to better follow the RCC Class maximums. Under the RCC there still are four offense penalty ranges that determine imprisonment at revocation, and the new penalties (under 8 years, 8 to under 24 years, 24 to under 40 years, and 40 years or over) closely track the current D.C. Code ranges (under 5 years, 5 to under 25 years, 25 to Class A or life, and Class A or life). The three lower ranges are also used to determine the maximum term of supervised release under the revised paragraph (b)(2). The revised statute’s thresholds reflect the RCC’s more graduated approach to penalty severity⁵ and better accommodate the penalty classes in the RCC.⁶ The RCC thresholds are also generally consistent with federal law distinctions in felonies meriting different amounts of time after revocation.⁷ This change improves the clarity, consistency, and proportionality of the revised statutes.

Fourth, the revised statute eliminates the requirement that the maximum term of imprisonment for most offenses be reduced by the maximum term of imprisonment authorized on revocation of supervised release. Under current D.C. Code § 24-403.01(b-1), the maximum imprisonment term that the court can impose is equal to the statutory

⁴ 18 U.S.C. § 3583 (b) (“Authorized Terms of Supervised Release.—Except as otherwise provided, the authorized terms of supervised release are—(1) for a Class A or Class B felony, not more than five years; (2) for a Class C or Class D felony, not more than three years; and (3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.”).

⁵ E.g., the current D.C. Code’s treatment of all forms of kidnapping (D.C. Code § 22–2001) or all offenses with a while-armed enhancement (D.C. Code § 22–4502(a)(4)) as Class A offenses treats widely variable kinds of behavior as equivalent. In contrast, the RCC grades offenses (and enhancements) previously designated as “Class A” felonies to better distinguish relatively minor from more severe conduct.

⁶ The RCC penalty classes differentiate offense maximum penalties at 8 years (Class 7), 24 years (Class 4), and 40 years (Class 2). Notably, Classes 1 and 2 are the functional equivalents of life sentences (see commentary to RCC § 22E-603). Also, by setting the lowest threshold at “under 8 years,” the lowest term of supervised release and imprisonment time after revocation for RCC Class 8 and 9 offenses, which have a maximum of 4 and 2 years respectively, still carry the same overall imprisonment exposure (3 years and 5 years) as current D.C. Code penalties carrying 3 and 5 year imprisonment terms from which revocation time must be subtracted at sentencing per D.C. Code § 24-403.01(b-1).

⁷ See 18 U.S.C. § 3583 (e)(3) (“[A] defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case;”); 18 U.S.C. § 3559 (“Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is— (1) life imprisonment, or if the maximum penalty is death, as a Class A felony; (2) twenty-five years or more, as a Class B felony; (3) less than twenty-five years but ten or more years, as a Class C felony; (4) less than ten years but five or more years, as a Class D felony; (5) less than five years but more than one year, as a Class E felony;”).

maximum stated in the offense only for offenses carrying a life sentence or designated as a “Class A” felony. For all other D.C. Code offenses, D.C. Code § 24-403.01(b-1) requires that the court subtract from the otherwise stated statutory maximum the maximum amount of imprisonment time authorized upon revocation of supervised release under subsection (b)(7)—a reduction of 3 years for offenses with a statutory maximum of 25 years or more, 2 years for offenses with a maximum of 5 years up to 25 years, and a reduction of 1 year for felony offenses with a maximum up to 5 years. In contrast, the revised statute does not limit the otherwise stated maximum term of imprisonment that can be imposed for an offense by the amount of backup time in D.C. Code § 24-403.01(b)(7).⁸ In conjunction with this change, the RCC penalty classes provide somewhat lower penalties than are common in the current D.C. Code.⁹ The net effect is that the RCC authorized penalty classes provide a more transparent statement of what imprisonment the court is allowed to impose, and largely accord with the maximum statutory penalties that are actually available in current D.C. practice once backup time is accounted for.¹⁰ This change improves the clarity, consistency, and proportionality of the revised statutes.

Fifth, the revised statute eliminates provisions providing various minimum and maximum sentences for certain offenses and aggravated versions of specified offenses. Current D.C. Code § 24-403.01(b-2) describes aggravating circumstances and procedures for alleging aggravating circumstances that, if proven, allow for higher sentences for various murder, carjacking, and sex offenses. Current D.C. Code §§ 24-403.01(e) and (f) provide statutory minimum sentences for various assault, sex, and weapon offenses when the actor has prior convictions of a specified type. Current D.C. Code § 24-403.01(g) clarifies that fines are available in addition to the imprisonment penalties described in the section. All offenses with penalties or aggravated penalties described in D.C. Code § 24-403.01 also have statutory penalties and are subject to enhancements for aggravating facts described elsewhere in the D.C. Code.¹¹ In contrast, the revised statute eliminates all minimum, maximum, and enhanced penalties specified in D.C. Code § 24-403.01 and instead specifies the relevant penalties and enhancements either in RCC Chapter 6 (Offense Classes, Penalties, & Enhancements) or the specific offense itself. There is no clear basis for specifying statutory minimums, maximums, and enhancements for in D.C. Code § 24-403.01, or treating these particular offenses differently than other similarly serious offenses. The revised statute specifies the penalties for all offenses in the same manner as

⁸ Under the revised statute, the total term of imprisonment imposed for revocation of supervised release in addition to the initial sentence imposed may exceed the statutory maximum sentence authorized for any given offense.

⁹ RCC § 22E-603, Authorized Terms of Imprisonment.

¹⁰ Compare the most common D.C. Code offense penalties, first line, with RCC § 22E-603, second line:

Life, 60Y, 40Y, 30Y, 20Y, 15Y, 10Y, 5Y, 3Y, 1Y, 180 days, 90 days, 30 days

45Y, 40Y, 30Y, 24Y, 18Y, 12Y, 8Y, 4Y, 2Y, 1Y, 180 days, 60 days, 10 days.

The maximum statutory penalties common in the D.C. Code are generally 1 or 2 years higher for low and mid-felonies than the corresponding RCC classes, but in practice they are nearly equivalent because these D.C. Code maximums must be reduced by 1 or 2 years for backup time under D.C. Code § 24-403.01(b)(7).

¹¹ Compare, e.g., penalty provisions in § 22-3008 (First degree child sexual abuse), D.C. Code § 22-3020 (Aggravating circumstances [sex offenses]), and enhancements such as D.C. Code § 22-3611 (Enhanced penalty for committing crime of violence against minors) with additional penalty provisions regarding first degree child sex abuse in D.C. Code § 24-403.01(b-2)(1), (b-2)(2), (b-2)(3), (e), and (f).

for all other RCC offenses, using standardized penalty classes.¹² This change improves the clarity, consistency, organization, and proportionality of the revised statutes.

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

The revised statute adds the word “adequate” to paragraph (b)(1) so it states: “If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section, the court shall impose an adequate period of supervision (“supervised release”) to follow release from the imprisonment or commitment.” This language mirrors the Congressional language in the Revitalization Act¹³ and clarifies the revised statutes.

¹² For further description of the penalties for RCC offenses corresponding to the D.C. Code offenses cited in D.C. Code § 24-403.01, see the commentary to RCC Chapter 6 (Offense Classes, Penalties, & Enhancements) and the particular offense. Tables showing the correspondence between RCC and D.C. Code offenses are provided in Appendices A and G [Advisory Group Memo #41 - Supplemental Materials to the First Draft of Report #69].

¹³ National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, 111 Stat. 712 (1997) Sec. 11212(b)(2)(C).

5. New statutory text and commentary providing deferred disposition for Classes C, D, and E.

Updated statutory text is as follows, with changes in red ink.

RCC § 22E-602. Authorized Dispositions.

- (a) Unless otherwise expressly specified by statute, a court may sentence a person upon conviction to sanctions that include:
 - (1) A term of imprisonment under RCC § 22E-603;
 - (2) A fine under RCC § 22E-604;
 - (3) Probation under D.C. Code § 16-710;
 - (4) Restitution or reparation under D.C. Code § 16-711;
 - (5) Community service under D.C. Code § 16-712;
 - (6) Post-release supervision under D.C. Code § 24-903; and
 - (7) Work release under D.C. Code § 24-241.01.
- (b) A court may sentence a person upon conviction to either imprisonment under RCC § 22E-603 or a fine under RCC § 22E-604, but not both, for the following statutes prosecuted by the Attorney General for the District of Columbia:
 - (1) [RESERVED.]
- (c) *Dismissal of proceedings.*
 - (1) When a person is found guilty of violation of any Class C, D, or E offense, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge the person from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against the person. Discharge and dismissal under this subsection shall be without court adjudication of guilt. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under RCC § 22E-606 for second or subsequent convictions) or for any other purpose.
 - (2) Upon the dismissal of the person and discharge of the proceedings against the person under paragraph (1) of this subsection, the person may apply to the court for an order to expunge from all official records all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that the person was dismissed and the proceedings against the person discharged, it shall enter such order. The effect of such

order shall be to restore the person, in the contemplation of this law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of the person for any purpose.

Updated commentary to the RCC authorized disposition statute is as follows, with changes in red ink and deleted text in strikethrough.

RCC § 22E-602. Authorized Dispositions.

Explanatory Note. Subsection (a) cross-references the typical sanctions that a court may impose upon conviction, which are elsewhere authorized. This is a non-exhaustive list and does not preclude the availability of other sanctions authorized by statute. This provision provides notice of the typical dispositions that are authorized in scattered sections and titles of the D.C. Code.

Subsection (b) limits the range of dispositions available under subsection (a) for specified offenses prosecuted by the Attorney General for the District of Columbia. Subsection (b) provides that for the listed offenses a court may sentence a person to either imprisonment or a fine, but not both. The listed offenses include: ~~[RESERVED]~~. This section is intended to preserve the existing authority of the Attorney General for the District of Columbia to prosecute select crimes and does not itself authorize sanctions.

Subsection (c) specifies deferred dismissal procedures when an actor is found guilty of a Class C, D, or E offense.

Paragraph (c)(1) provides that when “a person is found guilty of violation of a Class C, D, or E offense, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe.” Under paragraph (c)(1), if the person violates a condition of probation, the court “may enter an adjudication of guilt and proceed as otherwise provided.” If the person does not violate probation, paragraph (c)(1) provides for an early dismissal of the proceedings, and once the period of probation expires, paragraph (c)(1) states that “the court shall discharge such person and dismiss the proceedings against the person.” Under paragraph (c)(1), such a dismissal “shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime,” including repeat offender penalties such as in RCC § 22E-606. Under paragraph (c)(1), a judge may defer and dismiss proceedings for the case, even if the defendant has previously had a case dismissed.

Paragraph (c)(2) states that upon discharge of the proceedings under paragraph (c)(1), the person may apply to the court for an order to expunge “from all official records all recordation relating to the person’s arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection.” If the court determines, the person or her discharged, paragraph (c)(2) provides that “it shall enter such order.” Further, under paragraph (c)(2), “No person as to whom such order has been

entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of the person for any purpose.”

Relation to Current District Law.

RCC § 22E-602(a) cross-references existing District law except for its references to RCC § 22E-603 and RCC § 22E-604, which provide new RCC imprisonment and fine penalties.

RCC § 22E-602(b) codifies limitations on available dispositions for RCC offenses that currently exist in those offenses’ comparable D.C. Code offenses. To the extent that prosecutorial authority of the Attorney General for the District of Columbia may turn on that limitation,¹ the revised statute preserves the limitation and the designation of prosecutorial authority. No substantive change in law is intended.

RCC § 22E-602(c) changes current District law by specifying deferred disposition procedures for Class C, D, and E offenses. The current D.C. Code includes deferred disposition procedures for the prostitution offense² and possession of a controlled substance,³ but there is no generally applicable deferred disposition statutory provision. In contrast, subsection (b) grants judges the authority, when a defendant is convicted of a Class C, D, or E offense, to defer disposition and place the defendant on probation. If the defendant complies with the terms of probation, the judge shall dismiss the proceedings against the defendant. This discretionary authority is warranted given that Class C, D, and E offenses are the least serious offenses in the RCC and are comparable in severity to possession of a controlled substance or prostitution. While subsection (c) is modeled on D.C. Code § 48-904.01(e), it differs in three key ways. First, subsection (c) applies to all Class C, D, and E offenses, not just possession of a controlled substance. Second, subsection (c) does not require that the defendant have no prior convictions. Third, subsection (c) does not authorize the court to retain a non-public record of the dismissed proceeding.⁴ This change improves the proportionality of the revised criminal code.

¹ D.C. Code § 23–101(a) (“Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Corporation Counsel for the District of Columbia [Attorney General for the District of Columbia] or his assistants, except as otherwise provided in such ordinance, regulation, or statute, or in this section.”). Under DCCA case law, the limitation in as to the offense being fine-only or up to one year imprisonment only applies to “penal statutes in the nature of police or municipal regulations.” *D.C. v. Smith*, 329 A.2d 128, 130 (D.C. 1974) (“Here, the context, legislative history, and the long-established application of the statute all support our conclusion that the ‘fine only, or imprisonment’ phrase modifies only the ‘penal statute’ phrase. The Corporation Counsel’s basic prosecutorial jurisdiction over violations of ‘police or municipal ordinances or regulations’ is unaffected by the subsequent limitation concerning penal statutes.”).

² D.C. Code § 22-2703.

³ D.C. Code § 48-904.01.

⁴ Retention of a non-public record under D.C. Code § 48-904.01 is necessary since dismissal under 48-904.01(e) is only permitted if a defendant has not had any prior cases dismissed. Since subsection (c) does not require that the defendant have no prior convictions, retention of a public record is unnecessary. Similarly, unlike § 48-904.01(e), subsection (c) does not entitle a defendant to a copy of the non-public record.

6. Update of revisions to D.C. Code § 16-705. Jury trial; trial by court.

The CCRC recommends that its prior draft statutory language and commentary be updated to substitute “60” for “90” days as a threshold for demandability in light of the recommendation elsewhere in this report to make the maximum imprisonment sentence for a Class C misdemeanor 60 days instead of 90 days. Updated statutory text is as follows, with changes in red ink; commentary will be similarly updated.

D.C. Code § 16-705. Jury trial; trial by court.

- (a) Until [midnight on a date three years after enactment of the RCC], in a criminal case tried in the Superior Court:
- (1) Except as provided in paragraph (a)(2) of this section, a trial for the offense shall be by jury when:
 - (A) According to the Constitution of the United States, the defendant is entitled to a jury trial;
 - (B) The defendant is charged with an offense that is punishable by a fine or penalty of more than \$1,000, or by imprisonment for more than ~~90~~ 60 days, or for more than six months in the case of the offense of contempt of court;
 - (C) The defendant is charged with an attempt, conspiracy, or solicitation to commit an offense specified in subparagraph (a)(1)(B) of this section;
 - (D) The defendant is charged with an offense under Chapter 12 of Title 22E in which the person who is alleged to have been subjected to the criminal offense is a “law enforcement officer” as defined in D.C. Code § 22E-701;
 - (E) The defendant is charged with a “registration offense” as defined in D.C. Code § 22-4001(8);
 - (F) The defendant is charged with an offense that, if the defendant were a non-citizen and were convicted of the offense, could result in the defendant’s deportation from the United States under federal immigration law, or denial of naturalization under federal immigration law; or
 - (G) The defendant is charged with 2 or more offenses which are punishable by a cumulative fine or penalty of more than \$1,000 or a cumulative term of imprisonment of more than ~~90~~ 60 days; and
 - (2) A trial for the offense shall be by a single judge whose verdict shall have the same force and effect as that of a jury:
 - (A) In any case not specified in paragraphs (a)(1)(A) – (a)(1)(G) of this section; or
 - (B) In any case specified in paragraphs (a)(1)(A) – (a)(1)(G) of this section if the defendant in open court expressly waives trial by jury and requests trial by the court more than 10 days before the scheduled trial or, with the consent of the court, within 10 days of the scheduled trial.

- (b) After [midnight on a date three years after enactment of the RCC], in a criminal case tried in the Superior Court:
 - (1) Except as provided in paragraph (b)(2) of this section, a trial shall be by jury when:
 - (A) According to the Constitution of the United States, the defendant is entitled to a jury trial;
 - (B) The defendant is charged with an offense that is punishable by a fine or penalty of more than \$250, or by imprisonment, or for more than six months in the case of the offense of contempt of court;
 - (C) The defendant is charged with 2 or more offenses which are punishable by a cumulative fine or penalty of more than \$250; and
 - (2) A trial shall be by a single judge whose verdict shall have the same force and effect as that of a jury:
 - (A) In any case not specified in paragraphs (b)(1)(A) – (b)(1)(C) of this section; or
 - (B) In any case specified in paragraphs (b)(1)(A) – (b)(1)(C) of this section if the defendant in open court expressly waives trial by jury and requests trial by the court more than 10 days before the scheduled trial or, with the consent of the court, within 10 days of the scheduled trial.
- (c) If a defendant in a criminal case is charged with 2 or more offenses and the offenses include at least one jury demandable offense and one non-jury demandable offense the trial for all offenses charged against that defendant shall be by jury unless the defendant in open court expressly waives trial by jury and requests trial by the court, in which case the trial shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.
- (d) The jury shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. Even absent such agreement, if, due to extraordinary circumstances, the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court, a valid verdict may be returned by the remaining eleven jurors.