First Draft of Report #16
Recommendations for Robbery

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.ccrc.dc.gov.

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

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

The deadline for the Advisory Group's written comments on this First Draft of Report No. 16, *Recommendations for Robbery*, is March 2, 2018 (about ten weeks from the date of issue). Oral comments and written comments received after March 2, 2018 may not be reflected in the Second Draft of Report No. 16. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

Chapter 12. Robbery, Assault, and Threat Offenses

Section 1201. Robbery

(a) *Aggravated Robbery*. A person commits the offense of aggravated robbery when that person:

(1) Commits Third degree robbery; and

(2) In the course of doing so:

(A) Recklessly causes serious bodily injury to someone physically present, other than an accomplice, by means of what, in fact, is a dangerous weapon; or

(B) Recklessly causes serious bodily injury to someone physically present, other than an accomplice, who is a protected person.

(b) *First Degree Robbery*. A person commits the offense of first degree robbery when that person:

(1) Commits Third degree robbery and;

(2) Either:

(A) In the course of doing so:

(i) Recklessly causes serious bodily injury to someone physically present, other than an accomplice;

(ii) Recklessly causes significant bodily injury to someone physically present, other than an accomplice, by means of what, in fact, is a dangerous weapon; or

(iii) Recklessly causes significant bodily injury to someone physically present, other than an accomplice, who is a protected person; or

(B) Knowingly takes or exercises control over, or attempts to take or exercise control over what is, in fact, a motor vehicle, by means of a dangerous weapon.

(c) *Second Degree Robbery.* A person commits the offense of second degree robbery when that person:

(1) Commits Third degree robbery; and

(2) Either:

(A) In the course of doing so:

(i) Recklessly causes significant bodily injury to someone physically present, other than an accomplice; or

(ii) Recklessly causes bodily injury to, or commits a first degree criminal menace as defined in RCC 22A-1203(a) against, someone physically present other than an accomplice, who is a protected person; or

(B) In fact, the property that is the object of the offense is a motor vehicle.

(d) *Third Degree Robbery*. A person commits the offense of third degree robbery when that person:

(1) Knowingly takes, exercises control over, or attempts to take or exercise control over;

(2) The property of another;
(3) That is in the immediate actual possession or control of another person;
(4) By means of or facilitating flight by:
(A) Using physical force that overpowers any other person present, other than an accomplice;
(B) Causing bodily injury to any other person present, other than an accomplice, or
(C) Committing conduct constituting a second degree criminal menace as defined in RCC 22A-1203(b) against any other person present, other than an accomplice;
(5) With intent to deprive the owner of the property.

(e) *Penalties.*

(1) *Aggravated Robbery.* Aggravated robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(2) *First Degree Robbery.* First degree robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(3) *Second Degree Robbery.* Second degree robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(4) *Third Degree Robbery.* Third degree robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(f) *Definitions.* The terms "knowingly," "with intent," and "recklessly" have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "serious bodily injury," "protected person," "significant bodily injury," "dangerous weapon" and "bodily injury," "physical force" and "" have the meanings specified in § 22A-1001.

RCC § 22A-1201. Robbery

Commentary

Explanatory Note. *This section establishes the robbery offense and penalty gradations for the Revised Criminal Code (RCC). The offense criminalizes taking, or exercising control over property from the actual immediate possession of another or attempting to do so, by means of causing bodily injury, use of overpowering physical force, or a criminal menace. The penalty gradations are based on the severity of bodily injury caused, whether the injury was caused by means of a dangerous weapon, whether the robbery was committed against a protected person, and whether the property involved was a motor vehicle. Taking or exercising control over property in the immediate actual possession of another without physical force, bodily injury, or criminal menace is no longer criminalized as robbery in the RCC, but as a form of theft. The revised robbery statute replaces the District's current robbery statute[1] and its carjacking statute.[2] Insofar as they are applicable to current robbery and carjacking offenses, the revised robbery offense also replaces the protection of District public officials statute[3] and five penalty enhancements: the enhancement for senior citizens;[4] the enhancement for citizen patrols;[5] the enhancement for minors;[6] the enhancement for taxicab drivers;[7] and the enhancement for transit operators and Metrorail station managers.[8]*

Subsection (d) establishes the elements for third degree robbery, which are also required for all other grades of robbery. Subsection (d)(1) specifies that the defendant must take, or exercise control over property, or attempt to do so.[9] Subsection (d)(1) also specifies that the culpable mental state for (d)(1) is knowledge, a term defined at RCC § 22A-206 to mean that the accused must have been aware to a practical certainty or consciously desired that he would take or exercise control over property, or that he would attempt to do so.

Subsection (d)(2) specifies that the defendant must take or exercise control over, or attempt to take or exercise control over "property of another." The term "property of another" is defined under RCC § 22A-2001 as property that some other person has a legal interest in with which the defendant cannot interfere. Per the rule of construction in RCC § 22A-207, the "knowingly" mental state from (d)(1) applies to this element, requiring that the defendant was aware to a practical certainty or consciously desired that the item is "property of another."

Subsection (d)(3) specifies that the property must be in the immediate actual possession or control of another person. Property is in the immediate actual possession of another when that person has the property on their person, or when the property is in an "area within which the victim can reasonably be expected to exercise some physical control over the property."[10] Property is in the immediate actual control of a person when that person is able to exercise control over it at the time of the alleged crime, even it is located far enough from that person that

[1] D.C. Code § 22-2801.
[2] D.C. Code § 22-2803.
[3] D.C. Code § 22-851.
[4] D.C. Code § 22-3601.
[5] D.C. Code § 22-3602.
[6] D.C. Code § 22-3611.
[7] D.C. Code §§ 22-3751; 22-3752.
[8] D.C. Code §§ 22-3751.01; 22-3752.
[9] The conduct described by the phrase "takes, or exercises control over" is the same as the conduct described by identical language in the RCC § 22A-2102 theft and other property offenses.
[10] *Sutton v. United States*, 988 A.2d 478, 485 (D.C. 2010).

he or she cannot exercise physical control over it,[11] or if the property is intangible and is therefore not located in any specific place.[12] Per the rule of construction in RCC § 22A-207, the "knowingly" mental state in subsection (d)(1) also applies to the element in subsection (d)(3), requiring that the accused was aware to a practical certainty or consciously desired that the property was in the immediate actual possession or control of another.

Subsection (d)(4) requires that the defendant takes or exercises control over property by means of, or facilitates flight by, one of the three alternatives listed in (d)(4)(A)-(C). The phrase "by means of" requires that the alternatives listed under (d)(4)(A)-(C) must play a causal role in the taking, or exercise of control over the property, or an attempt to take or exercise control over the property. Alternatively, the accused can facilitate flight from taking or exercising control over property, or attempting to do so, using one of the means listed under(d)(4)(A)-(C). The manner in which the overpowering physical force, bodily injury, or criminal menace is used by the accused is unrestricted to encompass any situation where these means play a causal role in the taking, exercise of control, or attempt to take or exercise control, per subsection (d)(1), or to facilitate flight[13] after the conduct in subsection (d)(1).[14] "Physical force" is a term defined under RCC §22A-1001 as the application of physical strength. Because the physical force must be sufficient to overpower[15] another person, incidental jostling or touching does not satisfy this element. "Bodily injury" is a term defined under RCC § 22A-1001, and requires "physical pain, illness, or any impairment of physical condition."

Per the rule of construction in RCC § 22A-207, the "knowingly" culpable mental state in subsection (d)(1) also applies to the element in subsection (d)(4), requiring that the accused be aware to a practical certainty or consciously desire that he or she took, exercised control over property, attempted to do so, or facilitated flight by one of the means listed in subsection (d)(4)(A)-(C). This requires both that the defendant was aware to a practical certainty or consciously desired that he or she was using physical force to overpower another person, causing bodily injury, or committing a criminal menace; and that the use of these means in some way causally aided or facilitated taking or exercising control over the property, attempting to take or exercise control over property, or flight thereafter.[16] Temporally, it is not required that when the defendant used force, caused bodily injury, or committed criminal menace, he or she had already formed an intent to take or exercise control over property.[17] Also, while robbery convictions

[11] For example, if a person is able to immediately transfer an object by calling from her phone, that object may be within her immediate actual control, even though the object is located farther away than would permit for physical control.

[12] For example, if a person is able to immediately transfer electronic funds from his phone, those electronic funds may be within his immediate actual control, even though the funds are intangible and in no specific location.

[13] For example, overpowering physical force may be used by the accused when resisting the owner's immediate attempt to regain the property.

[14] For example, it is not required that the physical force, bodily injury, or criminal menace be used against the person from whom the property was taken. It is sufficient if any of the means were used against any other person present, other than an accomplice to the robbery.

[15] Examples may include pushes, shoves, holds, and hugs if the facts of the case show that such conduct overwhelmed the complainant.

[16] Because it must be proven that the defendant knew that his or her use of overpowering physical force, bodily injury, or criminal menace was a cause of his or her taking or exercising control over property, an effective consent defense is not applicable to robbery.

[17] For example, a person who causes bodily injury with no intent to take or exercise control over property, but then realizes that the bodily injury creates an opportunity to take or exercise control over property—and does so or attempts to do so—could still be convicted of robbery. *See*, *Gray v. United States*, 155 A.3d 377 (D.C. 2017).

predicated on committing conduct constituting criminal menace require proof of each element for criminal menace, RCC §22A-1203, it is not required that the defendant knew that he was committing that specific crime or violating that statutory provision.[18]

Subsection (d)(5) requires that the defendant has intent to deprive the owner of property.[19] "Deprive" is a defined term meaning that the other person is unlikely to recover the property, or that it will be withheld permanently or long enough to lose a substantial portion of its value or benefit. "Intent" is also a defined term[20], meaning the defendant must have believed his or her conduct was practically certain to "deprive," the other person of the property. It is not necessary to prove that such a deprivation actually occurred, only that the defendant believed to a practical certainty, or consciously desired, that a deprivation would result.

Subsection (c) defines three alternative ways of committing second degree robbery. Second degree robbery requires that the defendant commit third degree robbery, and in the course of doing so, satisfies the elements under subsections (c)(2)(A)(i), (c)(2)(A)(ii), or (c)(2)(B).[21] Under subsection (c)(2)(A)(i), a person commits second degree robbery when, in the course of committing third degree robbery, he or she recklessly causes significant bodily injury to someone physically present, other than an accomplice. "Significant bodily injury" is a term defined under RCC § 22A-1001, as an injury that "to prevent long-term physical damage or to abate severe pain, requires hospitalization or immediate medical treatment beyond what a layperson can personally administer."[22] The defendant still must have satisfied all the elements of third degree robbery,[23] including *knowingly* using physical force, causing bodily injury, or committing a criminal menace. However, it is sufficient if the defendant was merely *reckless* as to causing *significant* bodily injury.[24] Under subsection (c)(2)(A)(ii), a person commits second degree robbery when in the course of committing third degree robbery he or she recklessly causes bodily injury to or commits an aggravated criminal menace against a person physically present who is a "protected person", other than an accomplice. The term "protected person" is

[18] In other words, the accused need not have known that his conduct was criminal and need not have known the elements that constitute a criminal menace per D.C. Code 22A-1203(b). The accused also need not have acted knowingly with respect to the elements of a criminal menace where that offense specifies different culpable mental state requirements. The robbery offense reference to a criminal menace imposes no additional culpable mental state requirements on the elements of a criminal menace, nor eliminates any such culpable mental state requirements.

[19] The culpable mental state described by the phrase "With intent to deprive that person of the property" is the same as the culpable mental state described by identical language in the RCC § 22A-2102 theft and other property offenses.

[20] RCC § 22A-206.

[21] Notably, the elements in subsections (c)(2)(A)(i), (c)(2)(A)(ii), or (c)(2)(B) of second degree robbery—as well as the gradation-specific elements first degree and aggravated robbery—need not aid or facilitate the robbery or flight therefrom. It is only in third degree robbery, and the incorporation of the elements of third degree robbery into more serious gradations, that there is a requirement that the defendant's use of physical force or, bodily injury, or a criminal menace must be a means of committing or facilitating flight from the taking or exercise of control over property, or attempt to take or exercise control over property.

[22] In addition, "significant bodily injury" also includes: "a fracture of a bone; a laceration that is at least one inch in length and at least one quarter inch in depth; a burn of at least second degree severity; a temporary loss of consciousness; a traumatic brain injury; and a contusion or other bodily injury to the neck or head caused by strangulation or suffocation." RCC §22A-1001.

[23] The reference to a third degree robbery in more serious robbery gradations imposes no additional culpable mental state requirements on the elements of third degree robbery, nor eliminates any such culpable mental state requirements.

[24] For example, the culpable mental state requirements as to subsection (c)(2)(A)(i) may be satisfied where the accused is practically certain that their conduct inflicts some pain on the complainant, but need only be reckless as to whether their conduct will inflict a significant bodily injury.

defined under RCC § 22A-1001. Under subsection (c)(2)(A)(ii), a defendant must have been reckless as to whether the person was a "protected person." Under subsection (c)(2)(B), a person commits second degree robbery when the property of another that he or she takes or exercises control over, or attempts to do so, is a motor vehicle. Subsection (c)(2)(B) uses the term "in fact" to specify that there is no culpable mental state as to whether the property was a motor vehicle.

Subsection (b) defines four alternate versions of first degree robbery. First degree robbery requires that the person commit third degree robbery, and in the course of doing so, satisfies the elements under subsections (b)(2)(A)(i)-(iii) or (b)(2)(B). Under subsection (b)(2)(A)(i), a person commits first degree robbery if he or she recklessly causes serious bodily injury to someone present, other than an accomplice.[25] The term "serious bodily injury" is defined under RCC § 22A-1001 as an injury "that involves: a substantial risk of death; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty." As with second degree robbery, although the defendant must knowingly use the specified physical force, cause bodily injury, or commit criminal menace, recklessness as to causing serious or significant injury suffices. Under subsection (b)(2)(A)(ii), a person commits first degree robbery if he or she recklessly causes significant bodily injury by means of a dangerous weapon, in the course of committing third degree robbery. The words "by means of" require that the defendant actually used the dangerous weapon to cause the significant bodily injury.[26] Under subsection (b)(2)(A)(iii), a person commits first degree robbery if he or she recklessly causes significant bodily injury to a protected person. The "recklessly" culpable mental state applies both to whether the person injured was a protected person and to the infliction of a significant bodily injury. Under subsection (b)(2)(B), a person commits first degree robbery if he or she takes or exercises control over a motor vehicle, or attempts to do so by means of a dangerous weapon. Subsection (b)(2)(B) uses the term "in fact" to specify that there is no culpable mental state as to whether the property taken was a motor vehicle

Subsection (a) defines two alternate versions of aggravated robbery. Aggravated robbery requires that the defendant commit third degree robbery, and, in the course of doing so, satisfies the elements under (a)(2)(A) or (B). Under subsection (a)(2)(A) a person commits aggravated robbery if he or she recklessly causes serious bodily injury to any person physically present, other than an accomplice, by means of a dangerous weapon. The phrase "in fact" specifies that there is no culpable mental state as to whether the weapon used to cause the serious bodily injury was a "dangerous weapon." Under subsection (a)(2)(B), a person commits aggravated robbery if he or she recklessly causes serious bodily injury to a "protected person" who is physically present other than an accomplice. A recklessness mental state applies as to whether the person who suffered the serious bodily injury was a "protected person." As with second and first degree robbery, although the defendant must have knowingly used overpowering physical force, caused bodily injury, or committed criminal menace, a recklessness mental state suffices as to causing serious bodily injury.

Subsection (e) specifies relevant penalties for the offense. [RESERVED]

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

[25] A serious bodily injury necessarily constitutes a significant bodily injury.

[26] It is insufficient if the defendant causes significant bodily injury by some other means, while armed with a dangerous weapon.

Relation to Current District Law. *The revised robbery statute changes current District law in nine main ways to reduce overlap with other offenses and improve the proportionality of penalties.*

First, the revised robbery offense does not criminalize non-violent pickpocketing or taking or exercising control over property without the use of bodily injury, overpowering physical force, or the commission of a criminal menace. The current robbery and carjacking statutes, by contrast, criminalize pickpocketing and other takings of property from the immediate actual possession of another by sudden or stealthy seizure, or snatching, even when the complainant did not know the property was taken (and so was not menaced, let alone injured).[27] Under the RCC, such non-violent pickpocketing, seizures, and snatchings of property from the person are criminalized as theft[28] instead of robbery. This change improves the proportionality of the robbery statute. Taking an object from the immediate actual possession of another person without their knowledge,[29] or with only minor touching that does not cause bodily injury or involve overpowering physical force merits less severe punishment than takings that involve physical harm or criminal menacing.

Second, the revised robbery statute divides the offense into four grades of robbery based chiefly on the extent of the violence involved in taking or exercising control over property. By contrast, the current robbery statute consists of a single grade that does not distinguish between crimes in which the defendant went entirely unnoticed by the complainant (e.g., pickpocketing) and those where the defendant inflicted serious bodily injury. The revised robbery statute largely follows existing District law in conceptualizing robbery as a composite offense involving a theft from a person and an assault. All grades of robbery require that the defendant took or exercised control over property in the immediate actual possession of another, or attempted to do so, by means of or facilitating flight by bodily injury, overpowering physical force, or criminal menace. The chief variations in the lower three grades of the revised statutes correspond to the three main distinctions in intrusion under the current and revised assault statute—menacing/overpowering physical force/bodily injury (lowest level harm), significant bodily injury (intermediate level harm), and serious bodily injury (most severe harm). The taking of a motor vehicle, accounting for the current carjacking offense, is also integrated into the revised robbery gradations. This new grading scheme creates consistency with the revised assault offenses, improves the

[27] *Spencer v. United States*, 73 App. D.C. 98 (D.C. Cir. 1940) (affirming robbery conviction when defendant took cash from person's pants, which were resting on a chair at the foot of a bed that defendant was using at the time); *Ulmer v. United States*, 649 A.2d 295, 298 (D.C. 1994). Unlike the clear case law on robbery, whether current District law on carjacking extends liability to takings that occur without a criminal menace or use of force is not firmly established in District case law. However, the statutory language regarding "sudden or stealthy seizure, or snatching" that requires no use of force or criminal menace is identical in the current robbery and carjacking statutes. And, in at least one case, the DCCA, ruling on other issues, appears to have upheld a carjacking conviction on facts that involved a sudden and stealthy seizure with no apparent criminal menace, use of physical force, or bodily injury. *See Young v. United States*, 111 A.3d 13, 14 (D.C. 2015) (affirming multiple convictions for carjacking, first degree theft, and unauthorized use of a motor vehicle based on the defendant's taking a car with keys in it while the owner was standing nearby).

[28] *See* D.C. Code § 22A-2101.

[29] The DCCA has defined "immediate actual possession" under the robbery statute "refers to the area within which the victim can reasonably be expected to exercise some physical control over the property." *Sutton v. United States*, 988 A.2d 478, 485 (D.C. 2010). *See also*, *Beaner v. United States*, 845 A.2d 525, 532-33 (D.C. 2004) (holding that the term "immediate actual possession," as used in the carjacking statute was borrowed from the robbery statute, includes a car that was several feet from the owner when it was taken).

proportionality of punishment by matching more severe penalties to those robberies that inflict greater harms.

Third, the revised robbery statute's grading scheme integrates penalty enhancements for using a 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. The replacement of D.C. Code § 22-4502 by the weapon provisions in the revised robbery offense involves several changes. In the RCC robbery offense the defendant must actually cause significant or serious bodily injury "by means of" a dangerous weapon, or commit an aggravated menace which involves a dangerous weapon. Merely being armed with or having readily available, a dangerous weapon would not be sufficient for the higher grades of robbery.[30] By contrast, 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]";[31] or if the weapon was merely in "close proximity or easily accessible during the commission of the underlying [offense],"[32] provided that the defendant also constructively possessed the weapon.[33] There is no further requirement under current law that the defendant actually used the weapon or caused any injury.[34] Insofar as actual use of a dangerous weapon is required under subsections (b)(2)(B), (b)(2)(D), and (a)(2)(A), the use of an imitation firearm is only relevant to grading robbery if an aggravated menace under subsection (c)(2)(A)(ii) is committed using an imitation firearm. Under current law, a person who commits robbery armed with or having readily available an imitation firearm, even if it is not used or displayed in any way, is subject to the enhanced penalties under D.C. Code § 22-4502. Including enhancements for use of a dangerous weapon within the revised robbery statute gradations improves the proportionality of punishment both by matching more severe penalties to those robberies that actually inflict greater harms by use of a weapon, 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.

Fourth, through the revised robbery statute's references to a "protected person," the offense creates new penalty enhancements for harms to several groups of persons, reduces penalty enhancements for some persons, and creates more proportionate penalties for harms to other groups of persons. Current District statutes provide additional liability for robbery committed against certain groups of persons. The District's protection of District public officials statute penalizes various actions, including assaults, against a District official or employee while

[30] The display of a dangerous weapon could be sufficient to establish liability for aggravated criminal menace per (c)(4)(C), however. Also, note that per the revised possession of a dangerous weapon during a crime of violence offense, RCC 22A-XXXX, the revised criminal code will still provide for additional punishments when committing a robbery while possessing, but not using or displaying, a dangerous weapon.

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

[32] *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).

[33] *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.").

[34] *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).

in the course of their duties or on account of those duties, or actions against a family member of a District official or employee.[35] The District also has penalty enhancements for robbery or carjacking of: minors;[36] senior citizens;[37] taxicab drivers;[38] and transit operators and Metrorail station managers.[39] Robbery and assault with intent to rob a member of a citizen patrol[40] are also subject to enhanced penalties.

In contrast with current law, the RCC robbery statute, through its references to harms to a "protected person," extends a new penalty enhancement to groups recognized elsewhere in the current D.C. Code as meriting special treatment: non-District government law enforcement and public safety employees in the course of their duties;[41] operators of private-vehicles-for hire in the course of their duties;[42] and vulnerable adults.[43] Unlike current law, the RCC robbery statute, however, does not provide a penalty enhancement for: persons robbed because of their participation in a citizen patrol (but not while on duty);[44] persons robbed because of their status as District officials or employees (but not while on duty);[45] and persons robbed because of their familial relationship to a District official or employee.[46] The RCC robbery statute also applies penalty enhancements across multiple gradations, rather than the one robbery and one carjacking gradation in current law, creating a more proportionate application of all these penalty enhancements.[47] The RCC robbery statute also limits the stacking of multiple penalty enhancements based on the categories in the definition of "protected person" and stacking of penalty enhancements for a protected person and the use of a weapon.[48]

Collectively, these changes provide a consistent enhanced penalty for robbing the categories of individuals included in the definition of "protected person," removing gaps in the current patchwork of separate enhancements, clarifying the law, and improving the proportionality of offenses. Extending enhanced protection for robbing individuals such as

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[35] D.C. Code § 22-851. A defendant who commits robbery under the revised statute necessarily commits an assault, and would be subject to the provisions of D.C. Code § 22-851(c) and (d). Where a robbery "intimidates, impedes, interferes" or has other statutorily specified results on a District official or employee, the defendant may be subject to D.C. Code § 22-851(b).

[36] D.C. Code § 22-3611.

[37] D.C. Code § 22-3601.

[38] D.C. Code §§ 22-3751; 22-3752.

[39] D.C. Code §§ 22-3751.01; 22-3752.

[40] D.C. Code § 22-3602.

[41] See commentary to RCC § 22A-1001(11) regarding the definition of a law enforcement officer.

[42] While taxicab drivers are currently the subject of a separate enhancement in § 22-3751, the enhancement was enacted in 2001, well before the ubiquity of private vehicles-for-hire. The Council recently amended certain laws applicable to taxicabs and taxicab drivers to include private vehicles-for-hire. Vehicle-for-Hire Accessibility Amendment Act of 2016.

[43] Current D.C. Code §§ 22-933 and 22-936 make it a separate offense to assault a "vulnerable adult," with penalties depending on the severity of the injury.

[44] D.C. Code § 22-3602(b).

[45] D.C. Code § 22-851.

[46] D.C. Code § 22-851.

[47] The District's current penalty enhancements for minors, senior citizens, taxicab drivers, transit operators, and citizen patrol members are an increase in the maximum term of imprisonment by 1 ½ times the amount otherwise authorized. Robbery currently has a 2-15 year imprisonment penalty (3-22.5 years with one enhancement) and carjacking has a 7-21 year imprisonment penalty (10.5-31.5 years with one enhancement).

[48] Current District statutory law does not prevent stacking of such enhancements, and case law has not addressed the stacking of enhancements based on the categories covered in the RCC definition of protected person. However, convictions have been upheld applying both a "while armed" enhancement under D.C. Code § 22-4502 and an enhancement based on the victim's status as a senior or minor.

operators of private vehicles-for-hire, "vulnerable adults," and on-duty law enforcement officers and public safety employees who are not-District employees further reduces unnecessary gaps and improves the proportionality of the statutes.

Fifth, the revised robbery offense provides distinct liability for carjacking and carjacking by means of a dangerous weapon in its gradations, and requires a person to act knowingly with respect to taking or exercising control over a motor vehicle. By contrast, under current law carjacking is a legally distinct offense and only requires that the person acts "recklessly" with respect to the taking or exercise of control over the motor vehicle. There is no clear basis for requiring a lower culpable mental state for carjacking as compared to robbery generally, and it is not clear from legislative history that the Council intended such a difference.[49] Requiring a knowing culpable mental state is consistent with the current D.C. Court of Appeal's (DCCA) requirement of knowledge as to the lack of effective consent in the District's unauthorized use of a motor vehicle (UUV) statute[50] and in the revised UUV statute. Requiring a knowing culpable mental state also makes the revised robbery offense consistent with the revised theft statute and other property offenses, which generally require that the defendant act knowingly with respect to the elements of the offense.[51] Including carjacking as a form of robbery also improves the proportionality of punishment by prohibiting convictions for both robbery and carjacking based on a single act or course of conduct.[52]

Sixth, under the revised robbery statute a defendant may commit robbery if he or she only attempts to take or exercise control over property of another, and there is no requirement of asportation—movement—of the property that is the object of the offense. While the current robbery statute does not include an asportation element, the DCCA nonetheless has held that robbery requires that the defendant "possess the item being stolen and move it."[53] Asportation is a minimal requirement under current robbery law, as the DCCA has held that "the slightest moving of an object from its original location may constitute an asportation."[54] Current District law does not require asportation for carjacking liability.[55] By contrast, under the revised statute, the defendant must actually use physical force, cause bodily injury, or commit criminal menace,

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[49] The legislative history of the current carjacking statute does not discuss why a recklessly mental state was adopted. The committee report makes no mention of recklessness, and actually states that the statute "[d]efines the offenses of carjacking and armed carjacking as the knowing and/or forceful taking from another the possession of that person's motor vehicle." Committee Report to the Carjacking Prevetion Act of 1993, Bill 10-16 at 3. Moreover, the DCCA has recognized that the carjacking statute "eases the government's burden of proving traditional robbery . . . [by requiring] only that the taking be performed 'recklessly'". *Pixley v. United States*, 692 A.2d 438, 440 (D.C. 1997). However, there are no published cases in which a carjacking conviction was premised on a defendant recklessly taking a motor vehicle.

[50] *Moore v. United States*, 757 A.2d 78, 82 (D.C. 2000) (stating as an element "at the time the appellant took, used, operated or removed the vehicle he knew he that he did so without the consent of the owner.") (citations omitted); *Mitchell v. United States*, 985 A.2d 1136 (D.C. 2009); *Jackson v. United States*, 600 A.2d 90, 93 (D.C. 1991) ("[T]here is a fourth element of the offense which requires the government to prove at the time the defendant used the vehicle, he *knew* he did so without the consent of the owner." (emphasis in original).

[51] *See, e.g.*, RCC § 22A-2101.

[52] *Bryant v. United States*, 859 A.2d 1093, 1108 (D.C. 2004) (noting that armed carjacking and armed robbery convictions do not merge) (citing *Pixley v. United States*, 692 A.2d 438, 440 (D.C. 1997)).

[53] *Moorer v. United States*, 868 A.2d 137, 142 (D.C. 2005) (discussing *Newman v. United States*, 705 A.2d 246 (D.C. 1997)). *See also* D.C. Crim. Jur. Instr. § 4.300 ("[a]lthough not explicitly required in the statute, the government must prove that the defendant took the property and carried it away[.]").

[54] *Simmons v. United States*, 554 A.2d 1171 n.9 (D.C. 1989) (citing, *Durphy v. United States*, 235 A.2d 326, 327 (D.C.1967); *Ray v. United States*, 229 A.2d 161, 162 (D.C.1967)).

[55] *Moorer*, 868 A.2d at 140.

but need not successfully take or exercise control over the property for full robbery liability.[56] This change improves the proportionality of the offense by punishing the gravamen of the offense—the use of prohibited force or the infliction of bodily harm or a criminal menace against a person for financial gain—the same, whether or not the person ultimately succeeds in depriving the complainant of property.[57] This change also makes robbery more consistent with other offenses against persons which are based on the harm to the person, not the loss of property.

Seventh, the revised robbery statute punishes attempted robbery the same as most other criminal attempts.[58] Current District law provides a specific penalty for attempted robbery, apart from the general penalty for attempted crimes.[59] There is no clear rationale for such special attempt penalties in robbery as compared to other offenses. Under the revised robbery statute, the General Part's attempt provisions[60] will establish penalties for attempted robbery (including robbery of a motor vehicle) consistent with other offenses. This change improves the consistency of the revised robbery statute with other offenses.

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

First, the revised robbery statute applies a culpable mental state of knowledge to subsection (d)(1) which requires that the defendant takes or exercises control over property, or attempts to do so. The current robbery statute does not specify a culpable mental state for these elements and no case law exists directly on point. However, the DCCA has stated that robbery requires a "felonious taking,"[61] suggesting that a culpable mental state similar to that of theft should be applied. As a "knowing" culpable mental state applies to the revised theft statute,[62] an identical culpable mental state is provided for robbery. Applying a knowledge culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.[63] Requiring a knowing culpable mental state also makes the revised robbery statute consistent with offenses like theft, which generally require that the defendant act knowingly with respect to the elements of the offense.[64]

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[56] For example, if a person causes bodily injury to another in an attempt to take property from that person, but finds that the other person does not actually possess any property, or if the person successfully resists the attempt to take property, that person could still be found guilty of robbery. By contrast, a person who fails to even use physical force, cause bodily injury, or commit a criminal menace, but was dangerously close to doing so, could be found guilty of attempted robbery.

[57] *See* Commentary to MPC § 222.1 ("The same dangers are posed by the actor who is interrupted or who is foiled by an empty pocket as by the actor who succeeds in effecting the theft. The same correctional dispositions are justified as well. The primary concern is with the physical danger or threat of danger to the citizen rather than with the property aspects of the crime.").

[58] To clarify, attempted robbery is distinguished from completed robbery that involves an attempted theft. Completed robbery still requires that the defendant actually used physical force, caused bodily injury, or committed criminal menace. Attempted robbery does not necessarily require that the defendant actually satisfied any of those elements.

[59] D.C. Code § 22-2802.

[60] RCC § 22A-301.

[61] *Lattimore v. United States*, 684 A.2d 357, 359 (D.C. 1996).

[62] RCC § 22A-2101.

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

[64] *See, e.g.*, RCC § 22A-2101.

Second, the revised robbery statute requires that the property be "of another." The current statute does not explicitly require that the property taken be "of another." However, as noted above, the DCCA has held that the current robbery statute incorporates the elements of "larceny,"[65] which requires that property be of another.[66] Moreover, DCCA case law and current District practice suggests that carjacking liability similarly requires the property to be of another.[67] Requiring that the property be "of another" would codify this element suggested in District case law, and would bar a robbery conviction in cases in which the defendant took his or her own property.[68] This change would clarify existing law and improve penalty proportionality by limiting the more severe robbery penalties to conduct that involves an illegal taking, exercise of control, or attempted taking or exercise of control over another's property.

Third, the revised robbery statute incorporates statutory provisions that increase penalties based on the complainant's age, the status of the complainant as a District employee or transportation worker acting in the course of his or her duties, applying a reckless culpable mental state to these circumstances. The current robbery statute does not itself provide for any additional penalties based on the status of the victim. However, multiple separate statutory provisions apply to robbery in existing law, and are captured by the language in the revised robbery statute.[69] The language of these statutes is silent as to the culpable mental state, and there is virtually no case law construing these statutory enhancements.[70] However, while none of the statutes specify a culpable mental state, it is notable that D.C. Code § 22-3601 and D.C. Code § 22-3602 have affirmative defenses that exculpate where the defendant "reasonably believed" the victim was not a senior or minor. Such affirmative defenses suggest that strict liability does not apply, at least to those penalty enhancements, and suggest that some subjective awareness is necessary. Accordingly, the revised robbery statute requires a reckless culpable mental state as to the relevant circumstances of age, occupation, etc. This change clarifies the requisite culpable mental state requirements.

Fourth, the revised robbery statute can be satisfied if the defendant "takes or exercises control over" property from the immediate actual possession of another. In contrast, the current

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[65] *Lattimore*, 684 A.2d at 359 ("In the District of Columbia, robbery retains its common law elements.").

[66] At common law larceny required an intent to deprive the owner of the property, which is not possible if the property belongs to the person who takes it. Wayne, Lafave. § 20.3.Robbery, 3 Subst. Crim. L. § 20.3 ("Robbery consists of all six elements of larceny—a (1) trespassory (2) taking and (3) carrying away of the (4) personal property (5) of another (6) with intent to steal it—plus two additional requirements: (7) that the property be taken from the person or presence of the other and (8) that the taking be accomplished b means of force or putting in fear.").

[67] Redbook 4.302 ("S/he took [attempted to take] the [insert type of motor vehicle] without right to it;") ("The 'without right to it' language refers to the defendant's lack of a lawful claim to the motor vehicle, such as ownership. *See Allen v. United States*, 697 A.2d 1 (D.C. 1997) (listing as one of the elements of carjacking as the taking "of a person's vehicle," implying the taking of a vehicle owned by someone other than the defendant); *see also Pixley v. United States*, 692 A.2d 438 (D.C. 1997) (making no distinction between robbery and carjacking on the issue of actual ownership; thus, implying that a defendant could not be guilty of carjacking if he was the lawful owner of the motor vehicle).").

[68] Depending on the facts, prosecutions for criminal menace or assault nonetheless may be warranted where a person takes back one's own property by criminal menace, overpowering physical force, or bodily injury.

[69] D.C. Code § 22-3601, Enhanced penalty for crimes against senior citizens; D.C. Code § 22-3611, Enhanced penalty for committing crime of violence against minors; D.C. Code § 22-3751.01, Enhanced penalties for offenses committed against transit operators and Metrorail station managers; and D.C. Code § 22-851, Protection of District public officials.

[70] There is no case law regarding the mental state as to the status of the victim under D.C. Code §§ 22-3601; 22-3611; 22-3751.01; 22-851.

robbery statute requires that the defendant "takes" property, but does not use the words "exercise control over" property. However, it is not clear that these words substantively alter the scope of the offense. The DCCA has held that robbery incorporates the elements of larceny, and both the revised and current theft statutes include "taking" and "exercising control over" property.[71] Including "exercises control over" in the revised robbery statute would ensure that various means of conduct constituting theft would suffice for robbery even if there was no taking.[72] Including "exercises control over" also is consistent with current law with respect to carjacking. The DCCA has stated that a person may be convicted of carjacking "by burning the vehicle (or, perhaps stripping it) without taking, using, operating or removing it from its location."[73] The revised robbery statute more clearly and consistently tracks the theft-type conduct recognized in current law.

Fifth, the revised robbery statute requires that the defendant knowingly used physical force, caused bodily injury, or committed criminal menace. If a defendant is only reckless as to these elements, he or she cannot be convicted of robbery, even if he or she recklessly caused force or injury that facilitates taking property, or immediate flight. The current District robbery and carjacking statutes are silent as to what, if any culpable mental state applies to such conduct, and District case law has not clarified the issue.[74] The lack of clarity on this issue is perhaps not surprising, given that the current robbery offense only requires that the defendant took property from the immediate actual possession of another, and provides that the force requirement can be satisfied by moving the property to the slightest degree. Under current law, a defendant who injures another, and then intentionally takes property from that person's immediate possession would be guilty of robbery, regardless of whether he caused the injury knowingly or recklessly.[75] Applying a knowledge culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.[76] Requiring a knowing culpable mental state also makes the revised robbery statute consistent with offenses like theft, which generally require that the defendant act knowingly with respect to the elements of the offense.[77]

Sixth, under the revised robbery statute the defendant not only must have taken or exercised control over property, or attempted to do so, "by means of or facilitating flight by" overpowering physical force, bodily injury, or criminal menace—the defendant also must know that his or her use of force, etc. in some way facilitated taking or exercising control over the property, or flight afterwards. The current robbery and carjacking statutes are silent as to what culpability may be required as to whether the use of force, etc. facilitated taking or exercising control over the property, or flight afterwards. Current District case law holds that a person can commit robbery if he or she "takes advantage of a situation which he created by use of force,"

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[71] D.C. Code § 22A-2101; D.C. Code §22-3211(a)(1).

[72] For example, if a defendant used threat of force to compel a person to relinquish property and give it to a third person, the defendant could still be convicted of robbery even though he himself did not take the property.

[73] *Allen v. United States*, 697 A.2d 1, 2 (D.C. 1997).

[74] *See*, *Gray*, 155 A.3d at 396 (J. McCleese dissenting) ("Our cases leave me uncertain as to whether a defendant must laws have intentionally deployed force or violence in order to be guilty of robbery").

[75] *But see*, *Gray*, 155 A.3d at 386 ("We are not persuaded by the dissent's argument that *Leak* stands for the proposition that 'any taking' from the 'immediate actual possession' of the victim 'is a robbery—not simple larceny.'").

[76] *See Elonis*, 135 S. Ct.at 2009 ("[O]ur cases have explained that a defendant generally must 'know the facts that make his conduct fit the definition of the offense,' even if he does not know that those facts give rise to a crime. (Internal citation omitted)").

[77] *See*, *e.g.*, RCC § 22A-2101.

and that "it is hard to see how that is done without some *awareness* of the opportunity being exploited."[78] The DCCA does not specify, however, what degree of awareness is required under the current robbery statute. The revised statute requires knowledge, which is consistent with the DCCA's current holding, and reflects longstanding recognition that the conduct constituting a case generally must be known by the defendant.[79]

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

Notably, by use of the phrase "by means of or facilitating flight by," the revised robbery statute clarifies that the use of overpowering physical force, bodily injury, or criminal menace may occur *after* property is taken with intent to deprive. This somewhat unusual form of robbery is well-recognized in District case law and national precedents. For example, a person can commit robbery using the specified physical force, causing bodily injury, or committing criminal menace *after* the taking if the person uses those means to resist an immediate attempt to recover the property[80]; to keep property permanently after the other person consented to an initial temporary taking[81]; or to aid in immediate escape after the taking.[82] Similarly, under current District case law and the revised statute, it is not necessary that the person intended to take or exercise control over property at the time he used specified physical force, caused bodily injury, or committed criminal menace. If a person independently uses overpowering physical force, causes bodily injury, or commits a criminal menace, and subsequently realizes that doing so creates an opportunity to take or exercise control over property, he or she may be found guilty of robbery by taking advantage of that opportunity.[83]

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[78] *Gray*, 155 A.3d at 383 (emphasis added).

[79] *See Elonis*, 135 S. Ct. at 2009 ("[O]ur cases have explained that a defendant generally must 'know the facts that make his conduct fit the definition of the offense,' even if he does not know that those facts give rise to a crime. (Internal citation omitted)"). The causal relationship between the use of overpowering force, bodily injury, or criminal menace and the taking, exercising control over, or attempted the taking or exercising control over property is at the heart of robbery as a composite offense comprised of assault and theft-type conduct.

[80] 4 CHARLES E. TORCIA, WHARTON'S CRIMINAL LAW § 463, at 39-40 (15th ed. 1996) ("A thief who finds it necessary to use force or threatened force after a taking of property in order to retain possession may in legal contemplation be viewed as one who never had the requisite dominion and control of the property to qualify as a 'possessor.' Hence, it may be reasoned, the thief has not 'taken' possession of the property until his use of force or threatened force has effectively cut off any immediate resistance to his 'possession.' "); *but see*, Lafave, Wayen. § 20.3.Robbery, 3 Subst. Crim. L. § 20.3 (2d ed.) ("under the traditional view it I not robbery to steal property without violence or intimidation . . . although the thief later, in order to retain the stolen property or make good his escape, uses violence or intimidation upon the property owner").

[81] *See*, *Jacobs v. United States*, 861 A.2d 15, 20 (D.C. 2004) *recalled, vacated, and reissued,* 886 A.2d 510 (D.C. 2005).

[82] Model Penal Code § 222.1 (""an act shall be deemed 'in the course of committing a theft' if it occurs . . . in flight after the attempt or commission."); *see also*, Lafave, Wayne, § 20.3.Robbery, 3 Subst. Crim. L. § 20.3 (2d ed.) (noting that modern criminal codes allow for force or threats that occur during immediate flight from the taking to satisfy the elements of robbery). *See*, *Williams v. United States*, 478 A.2d 1101 (D.C. 1984). In *Williams*, the DCCA reversed appellant's conviction as an accessory after the fact to a robbery when the appellant served as a getaway driver. The court held that the "robbery was still in progress" when co-defendants got in the car with the proceeds of the robbery, and as the appellant drove away. The court noted that the robbery offense continues "as long as the robber indicates by his actions that he is dissatisfied with the location of the stolen goods immediately after the crime[.]" *Id.* at 1105. Including injuries caused during immediate flight is consistent with this case law, which holds that the robbery offense continues beyond the initial taking of property.

[83] *See*, *Gray*, 155 A.3d 377.

Relation to National Legal Trends. *The revised robbery statute's above-mentioned substantive changes to current District law are broadly supported by national legal trends, with the exception of distinctly recognizing carjacking as a form of robbery.*

First, excluding from the revised robbery statute pickpocketing and sudden and stealthy seizures is consistent with the approach across the twenty-nine states that have comprehensively reformed criminal codes influenced by the Model Penal Code (MPC) and have a general part[84] (hereinafter "reformed code jurisdictions"). No reformed code jurisdictions criminalize pickpocketing as a form of robbery. Robbery statutes in all reformed code jurisdictions, as well as the MPC,[85] require either "bodily injury,"[86] force[87], threat of force,[88] violence[89], intimidation,[90] or commits or threatens to commit any felony.[91] No reformed code jurisdictions' robbery statutes include taking property from the immediate actual possession of another by sudden or stealthy seizure.[92] Commentators have noted that "[t]aking the owner's property by

[84] *See* Paul H. Robinson & Markus D. Dubber, The American Model Penal Code: A Brief Overview, 10 NEW CRIM. L. REV. 319, 326 (2007) (listing 34 jurisdictions, six of which— Florida, Georgia, Iowa, Nebraska, New Mexico, and Wyoming–do not have general parts analogous to the Model Penal Code General Part). In addition, Tennessee reformed its criminal code after the publication of this article.

[85] Model Penal Code § 222.1.

[86] Me. Rev. Stat. tit. 17-A; Mo. Ann. Stat. § 570.025; Mont. Code Ann. § 45-5-401; N.J. Stat. Ann. § 2C:15-1; N.D. Cent. Code Ann. § 12.1-22-01; Ohio Rev. Code Ann. § 2911.02; 18 Pa. Stat. Stat. Ann. § 3701; Tex. Penal Code Ann. § 29.02.

[87] Ala. Code § 13A-8-43; Alaska Stat. Ann. § 11.41.510; Ariz. Rev. Stat. Ann. § 13-1902; Ark. Code Ann. § 5-12-102; Colo. Rev. Stat. Ann. § 18-4-301; Conn. Gen. Stat. Ann. § 53a-133; Del. Code Ann. tit. 11, § 831; Haw. Rev. Stat. Ann. § 708-841; 720 Ill. Comp. Stat. Ann. 5/18-1; Ind. Code Ann. § 35-42-5-1; Kan. Stat. Ann. § 21-5420; Ky. Rev. Stat. Ann. § 515.030; Minn. Stat. Ann. § 609.245; Mo. Ann. Stat. § 570.025; N.H. Rev. Stat. Ann. § 636:1; N.J. Stat. Ann. § 2C:15-1; N.Y. Penal Law § 160.00; Or. Rev. Stat. Ann. § 164.395; S.D. Codified Laws § 22-30-1; Utah Code Ann. § 76-6-301; Wash. Rev. Code Ann. § 9A.56.190; Wis. Stat. Ann. § 943.32. Note that Commission staff did not research case law interpreting the term "force" in each of these jurisdictions. It is possible that in at least some of these states, the "force" element can be satisfied by the most minimal degree of physical contact or jostling.

[88] Ala. Code § 13A-8-43; Alaska Stat. Ann. § 11.41.510; Ariz. Rev. Stat. Ann. § 13-1902; Ark. Code Ann. § 5-12-102; Colo. Rev. Stat. Ann. § 18-4-301; Conn. Gen. Stat. Ann. § 53a-133; Del. Code Ann. tit. 11, § 831; Haw. Rev. Stat. Ann. § 708-841; 720 Ill. Comp. Stat. Ann. 5/18-1; Ind. Code Ann. § 35-42-5-1; Kan. Stat. Ann. § 21-5420; Ky. Rev. Stat. Ann. § 515.030; Me. Rev. Stat. tit. 17-A; Minn. Stat. Ann. § 609.245; Mont. Code Ann. § 45-5-401; N.H. Rev. Stat. Ann. § 636:1; N.J. Stat. Ann. § 2C:15-1; N.Y. Penal Law § 160.00; N.D. Cent. Code Ann. § 12.1-22-01; Ohio Rev. Code Ann. § 2911.02; Or. Rev. Stat. Ann. § 164.395; 18 Pa. Stat. Stat. Ann. § 3701; S.D. Codified Laws § 22-30-1; Tenn. Code Ann. § 39-13-401; Tex. Penal Code Ann. § 29.02; Utah Code Ann. § 76-6-301; Wash. Rev. Code Ann. § 9A.56.190; Wis. Stat. Ann. § 943.32.

[89] Tenn. Code Ann. § 39-13-401; Wash. Rev. Code Ann. § 9A.56.190.

[90] Colo. Rev. Stat. Ann. § 18-4-301.

[91] Mont. Code Ann. § 45-5-401; 18 Pa. Stat. Stat. Ann. § 3701.

[92] Although statutes in all 29 reformed jurisdictions require at the very least, force or threats of force, it is unclear exactly how broadly robbery statutes have been interpreted by courts in other jurisdictions. Although stealthily taking property from the immediate actual possession of another without any touching would not constitute robbery in the 29 reformed jurisdictions, it is possible that a pick-pocketing that involves even a slight amount of physical contact could still satisfy the force requirement in some jurisdictions. *See*, 18 Pa. Stat. Stat. Ann. § 3701 (defining robbery as taking or removing property, *"by force however slight[.]"). See also*, LaFave, Wayne, 3 Subst. Crim. L. § 20.3 (2d ed.) ("Taking the owner's property by stealthily picking his pocket is not taking by force and so is not robbery;[50] but if the pickpocket or his confederate jostles the owner,[51] or if the owner, catching the pickpocket in the act, struggles unsuccessfully to keep possession,[52] the pickpocket's crime becomes robbery. To remove an article of value, attached to the owner's person or clothing, by a sudden snatching or by stealth is not robbery unless the article in question (e.g., an earring, pin or watch) is so attached to the person or his clothes as to require some force to effect its removal.") .

stealthily picking his pocket is not taking by force and so is not robbery"; nor is it robbery "when the thief snatches property from the owner's grasp so suddenly that the owner cannot offer any resistance to the taking."[93] The revised criminal code's requirement of bodily injury, a criminal menace, or overpowering physical force is consistent with these reform code jurisdictions.[94]

Second, dividing robbery into multiple penalty grades and grading based on the severity of bodily injury is also consistent with national norms. Of the twenty-nine reformed code jurisdictions, only one state, Montana, uses a single penalty grade for robbery.[95] A majority of the reformed code jurisdictions, and the MPC[96], divide robbery into two penalty grades[97], ten use three penalty grades[98], and two use five or more grades.[99] Of the twenty-nine reformed jurisdictions, twenty-two states, and the MPC,[100] use the severity of injury inflicted as a grading factor.[101] However, the revised robbery statute would be an outlier in distinguishing between bodily injury, serious bodily injury, and significant bodily injury in its robbery statute, consistent with the fact that few jurisdictions that have a level of harm comparable to the District's "significant bodily injury."[102]

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[93] LaFave, 3 SUBST. CRIM. L. § 20.3. In most jurisdictions, purse snatching itself does not constitute robbery. Peter G. Guthrie, *Purse Snatching as Robbery or Theft*, 42 A.L.R.3d 1381 (2014). However, depending on the specific facts, it is conceivable that a purse snatching could involve sufficient use of physical strength to constitute "overpowering physical force." However, this would be a highly fact specific inquiry, and the revised robbery statute is not intended to categorically include or bar purse snatchings.

[94] It is possible that case law in some reformed code jurisdictions would construe "force" in their statutes to include some conduct that is more severe than the incidental jostling and movements involved in sudden snatchings, but is less severe than "overpowering" physical force, the lowest standard for force recognized in the revised District statute.

[95] Mont. Code Ann. § 45-5-401.

[96] Model Penal Code § 222.1.

[97] Alaska Stat. Ann. § 11.41.500; Alaska Stat. Ann. § 11.41.510; Ark. Code Ann. § 5-12-102; Ark. Code Ann. § 5-12-103; Del. Code Ann. tit. 11, § 831; Del. Code Ann. tit. 11, § 832; Haw. Rev. Stat. Ann. § 708-840; Haw. Rev. Stat. Ann. § 708-841; Kan. Stat. Ann. § 21-5420; Ky. Rev. Stat. Ann. § 515.020; Ky. Rev. Stat. Ann. § 515.030; Me. Rev. Stat. tit. 17-A, § 651; Mo. Ann. Stat. § 570.023; Mo. Ann. Stat. § 570.025; N.H. Rev. Stat. Ann. § 636:1; N.J. Stat. Ann. § 2C:15-1; S.D. Codified Laws § 22-30-6; Tex. Penal Code Ann. § 29.02; Tex. Penal Code Ann. § 29.03; Utah Code Ann. § 76-6-301; Utah Code Ann. § 76-6-302; Wash. Rev. Code Ann. § 9A.56.200; Wash. Rev. Code Ann. § 9A.56.210; Wis. Stat. Ann. § 943.32.

[98] Ala. Code § 13A-8-41; Ala. Code § 13A-8-42; Ala. Code § 13A-8-43; Ariz. Rev. Stat. Ann. § 13-1902; Ariz. Rev. Stat. Ann. § 13-1903; Ariz. Rev. Stat. Ann. § 13-1904; Colo. Rev. Stat. Ann. § 18-4-301; Colo. Rev. Stat. Ann. § 18-4-302; Colo. Rev. Stat. Ann. § 18-4-303; Conn. Gen. Stat. Ann. § 53a-134; Conn. Gen. Stat. Ann. § 53a-135; Conn. Gen. Stat. Ann. § 53a-136; Minn. Stat. Ann. § 609.245; Minn. Stat. Ann. § 609.24; N.D. Cent. Code Ann. § 12.1-22-01; N.Y. Penal Law § 160.05; N.Y. Penal Law § 160.10; N.Y. Penal Law § 160.15; Ohio Rev. Code Ann. § 2911.02; Ohio Rev. Code Ann. § 2911.01; Ohio Rev. Code Ann. § 2913.02; Or. Rev. Stat. Ann. § 164.395; Or. Rev. Stat. Ann. § 164.405; Or. Rev. Stat. Ann. § 164.415; 18 Pa. Stat. Stat. Ann. § 3701; Tenn. Code Ann. § 39-13-401; Tenn. Code Ann. § 39-13-402; Tenn. Code Ann. § 39-13-403.

[99] 720 Ill. Comp. Stat. Ann. 5/18-1, Ind. Code Ann. § 35-42-5-1.

[100] Model Penal Code § 222.1 ("Robbery is a felony of the second degree, expect that it is a felony of the first degree if in the course of committing the theft the actor attempts to kill anyone, purposely inflicts or attempts to inflict serious bodily injury.").

[101] Alaska Stat. Ann. § 11.41.500; Ala. Code § 13A-8-41; Ark. Code Ann. § 5-12-103; Conn. Gen. Stat. Ann. § 53a-134; Del. Code Ann. tit. 11, § 832; Haw. Rev. Stat. Ann. § 708-840; 720 Ill. Comp. Stat. Ann. 5/18-1; Ind. Code Ann. § 35-42-5-1; Kan. Stat. Ann. § 21-5420; Ky. Rev. Stat. Ann. § 515.020; Mo. Ann. Stat. § 570.023; N.D. Cent. Code Ann. § 12.1-22-01; N.H. Rev. Stat. Ann. § 636:1; N.J. Stat. Ann. § 2C:15-1; N.Y. Penal Law § 160.10; Ohio Rev. Code Ann. § 2911.01; Or. Rev. Stat. Ann. § 164.415; 18 Pa. Stat. Stat. Ann. § 3701; Tenn. Code Ann. § 39-13-403; Tex. Penal Code Ann. § 29.03; Utah Code Ann. § 76-6-302; Wash. Rev. Code Ann. § 9A.56.200.

[102] As noted in the Commentary to the revised assault statute, RCC § 22A-1202, only eight states appear to provide for an intermediate gradation of assault that requires an injury similar to the District's "significant bodily injury."

Third, including robbery gradations based on causing injury by means of a dangerous weapon is consistent with national norms, although the District would be in the minority by requiring that the defendant actually use the weapon. Of the twenty-nine reformed jurisdictions, twenty-five states punish robbery more severely when the defendant was armed with or used a dangerous or deadly weapon.[103] A majority of these states merely require that the defendant was armed while committing the robbery, although ten states require that the defendant used or brandished the weapon during commission of the robbery in order to authorize more severe penalties.[104]

Fourth, in contrast with current law, the RCC robbery statute, through its references to harms to a "protected person," extends a new penalty enhancement to groups recognized elsewhere in the current D.C. Code as meriting special treatment: non-District government law enforcement and public safety employees in the course of their duties;[105] operators of private-vehicles-for hire in the course of their duties;[106] and vulnerable adults.[107] No reformed jurisdictions appear to enhance robbery on the basis of an individual's status as a law enforcement or public safety employee or operator of a private-vehicle-for-hire. However, several of the 29 reformed jurisdictions do enhance some or all of their gradations of robbery on the basis of the complainant's disability.[108] In addition, several reformed jurisdictions enhance

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Ind. Code Ann. § 35-31.5-2-204.5 ("Moderate bodily injury" means any impairment of physical condition that includes substantial pain."); Haw. Rev. Stat. Ann. 707-700; Minn. Stat. Ann. 609.02; N.D. Cent. Code Ann. 12.1-01-04; Utah Code Ann. 76-1-601; Wash. Rev. Code Ann. 9A.04.110; Wis. Stat. Ann. 939.22; S.C. Code Ann. § 16-25-10.

[103] Ala. Code § 13A-8-41; Alaska Stat. Ann. § 11.41.500; Ariz. Rev. Stat. Ann. § 13-1904; Ark. Code Ann. § 5-12-103; Conn. Gen. Stat. Ann. § 53a-134; Del. Code Ann. tit. 11, § 832; Haw. Rev. Stat. Ann. § 708-840; 720 Ill. Comp. Stat. Ann. 5/18-2; Ind. Code Ann. § 35-42-5-1; Kan. Stat. Ann. § 21-5420; Ky. Rev. Stat. Ann. § 515.020; Minn. Stat. Ann. § 609.245; Mo. Ann. Stat. § 570.023; N.H. Rev. Stat. Ann. § 636:1; N.J. Stat. Ann. § 2C:15-1; N.Y. Penal Law § 160.15; Ohio Rev. Code Ann. § 2911.02; Or. Rev. Stat. Ann. § 164.405; Wash. Rev. Code Ann. § 9A.56.200;

[104] Colo. Rev. Stat. Ann. § 18-4-302 (requires that defendant was armed with "a deadly weapon, with intent, if resisted, to kill, main, or wound the person robbed or any other person[.]");720 Ill. Comp. Stat. Ann. 5/18-2 (more severe penalties authorized if defendant "personally discharges a firearm" during commission of the crime, and more severe if this results in "great bodily harm, permanent disability, permanent disfigurement, or death[.]"); N.Y. Penal Law § 160.15 (first degree robbery requires either being armed with a "deadly weapon," or actually using or threatening to use a "dangerous instrument"); Ohio Rev. Code Ann. § 2911.01 (aggravated robbery includes possessing a "deadly weapon" and requires that the defendant "either display the weapon, brandish it, indicate that the offender possesses it, or use it"); Or. Rev. Stat. Ann. § 164.415 (first degree robbery requires that the defendant was either armed with a deadly weapon, or "uses or attempts to use a dangerous weapon"); S.D. Codified Laws § 22-30-6 (one form of first degree robbery requires that the offense be "accomplished by use of a dangerous weapon"); Tenn. Code Ann. § 39-13-402; Tenn. Code Ann. § 39-13-403; Tex. Penal Code Ann. § 29.03 (one form of aggravated robbery requires that the defendant "uses or exhibits a deadly weapon"); Utah Code Ann. § 76-6-302 (one form of aggravated robbery requires that the defendant "uses or threatens to use a dangerous weapon"); Wis. Stat. Ann. § 943.32.

[105] See commentary to RCC § 22A-1001(11) regarding the definition of a law enforcement officer.

[106] While taxicab drivers are currently the subject of a separate enhancement in § 22-3751, the enhancement was enacted in 2001, well before the ubiquity of private vehicles-for-hire. The Council recently amended certain laws applicable to taxicabs and taxicab drivers to include private vehicles-for-hire. Vehicle-for-Hire Accessibility Amendment Act of 2016.

[107] Current D.C. Code §§ 22-933 and 22-936 make it a separate offense to assault a "vulnerable adult," with penalties depending on the severity of the injury.

[108] *See, e.g.,* Haw. Rev. Stat. Ann. § 706-669(a)(ii) ("in the course of committing or attempting to commit a felony, causes the death or inflicts serious or significant bodily injury upon another person who is . . . blind, a paraplegic, or a quadriplegic."); N.H. Rev. Stat. Ann. § 651:6(I)(d) (authorizing an extended term of imprisonment if a jury finds

robbery on the basis of the complainant's status as a senior citizen,[109] as do current District law and the RCC. Unlike current law, the RCC robbery statute does not provide a penalty enhancement for: persons robbed because of their participation in a citizen patrol (but not while on duty);[110] persons robbed because of their status as District officials or employees (but not while on duty);[111] and persons robbed because of their familial relationship to a District official or employee.[112] No reformed jurisdictions appear to enhance robbery on the basis of these categories. The MPC does not enhance robbery on the basis of the identity of the complainant.

The RCC robbery statute also limits the stacking of multiple penalty enhancements based on the categories in the definition of "protected person" and stacking of penalty enhancements for a protected person and the use of a weapon.[113] The MPC and reformed jurisdictions generally do not statutorily address stacking a weapon enhancement with another enhancement, although at least one jurisdiction explicitly permits stacking.[114]

Fifth, eliminating carjacking as a separate offense is consistent with national norms, although the District would be in a small minority by continuing to recognize carjacking as a form of robbery. Of the twenty-nine reform jurisdictions, four states distinguish carjacking as a form of robbery,[115] and five include separate carjacking offenses in their codes.[116] The majority of reform jurisdictions do not appear to penalize carjacking differently than other forms of robbery. Also, requiring that the defendant acted knowingly with respect to taking a motor vehicle is consistent with national norms. No reform jurisdictions with specific statutory

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beyond a reasonable doubt that the defendant has "committed an offense involving the use of force against a person with the intention of taking advantage of the victim's age or physical disability."); 720 Ill. Comp. Stat. Ann. 5/18-1 (making robbery a Class 2 felony unless the "victim . . . is a person with a physical disability."); Tex. Penal Code § 29.03((a)(3)(B) (defining aggravated robbery, in part, as "causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is . . . a disabled person.").

[109] *See, e.g.*, Haw. Rev. Stat. Ann. § 706-669(a)(ii) ("in the course of committing or attempting to commit a felony, causes the death or inflicts serious or significant bodily injury upon another person who is . . . sixty years of age or older."); N.H. Rev. Stat. Ann. § 651:6(I)(d) (authorizing an extended term of imprisonment if a jury finds beyond a reasonable doubt that the defendant has "committed an offense involving the use of force against a person with the intention of taking advantage of the victim's age or physical disability."); Del. Code Ann. tit. 11, § 832(a)(4) (defining first degree robbery, in part, as committing robbery in the second degree and, "in the course of the commission of the crime or immediate flight therefrom, the person or another participant in the crime . . . commits said crime against a person who is 62 years of age or older."); 720 Ill. Comp. Stat. Ann. 5/18-1 (making robbery a Class 2 felony unless the "victim . . . is 60 years of age or over."); Tex. Penal Code § 29.03((a)(3)(A) (defining aggravated robbery, in part, as "causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is 65 years of age or older.").

[110] D.C. Code § 22-3602(b).

[111] D.C. Code § 22-851.

[112] D.C. Code § 22-851.

[113] Current District statutory law does not prevent stacking of such enhancements, and case law has not addressed the stacking of enhancements based on the categories covered in the RCC definition of protected person. However, convictions have been upheld applying both a "while armed" enhancement under D.C. Code § 22-4502 and an enhancement based on the victim's status as a senior or minor.

[114] Me. Rev. Stat. tit. 17-A, § 1252 ("Subsections in this section that make the sentencing class for a crime one class higher than it would otherwise be when pled and proved may be applied successively if the subsections to be applied successively contain different class enhancement factors.").

[115] Conn. Gen. Stat. Ann. § 53a-136a; Haw. Rev. Stat. Ann. § 708-840; N.Y. Penal Law § 160.10; Utah Code Ann. § 76-6-302.

[116] N.J. Stat. Ann. § 2C:15-2; 18 Pa. Stat. Ann. § 3702; 720 Ill. Comp. Stat. Ann. 5/18-3; Del. Code Ann. tit. 11, § 836; Tenn. Code Ann. § 39-13-404.

provisions that address carjacking apply a recklessness mental state as to taking of a motor vehicle.[117]

Sixth, eliminating the asportation element is also consistent with national norms. Although robbery traditionally required that the defendant carry away property[118], as discussed above, in nearly all of the reformed jurisdictions' robbery statutes, actually carrying away the property is not required. Twenty seven of the reformed code jurisdictions' statutes, and the MPC's robbery statute[119], can be satisfied if the defendant takes or attempts to take property.[120]

Seventh, eliminating the separate penalty provision for attempted robbery is consistent with national norms. None of the reformed code jurisdictions includes separate penalties for attempted robbery apart from their general rules for punishing attempts.

[117] Del. Code Ann. tit. 11, § 835 ("A person is guilty of carjacking in the second degree when that person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person."); 720 Ill. Comp. Stat. Ann. 5/18-3 ("A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force."); Tenn. Code Ann. § 39-13-404 ("Carjacking" is the intentional or knowing taking of a motor vehicle from the possession of another by use of: (1) A deadly weapon; or (2) Force or intimidation."); Utah Code Ann. § 76-6-302 (robbery requires that the defendant "intentionally takes or attempts to take personal property). Connecticut, and New York's robbery statutes require that the defendant commit larceny, which requires intent or knowledge. Conn. Gen. Stat. Ann. § 53a-136a; *State v. Papandrea*, 991 A.2d 617, 623 (Conn. App. Ct. 2010) ("Because larceny is a specific intent crime, the state must show that the defendant acted with the subjective desire or knowledge that his actions constituted stealing"); N.Y. Penal Law § 160.10; *People v. Almonte*, 424 N.Y.S.2d 868, 868 (Sup. Ct. 1980) ("the basic elements of the crime of robbery in the second degree, as charged here, are that: the defendant (1) stole property (2) from an owner thereof (3) by force (4) with intent to deprive the owner of the property permanently").

[118] Lafave, Wayne. Robbery, 3 Subst. Crim. L. § 20.3 (2d ed.) ("Just as larceny requires that the thief both 'take' (secure dominion over) and 'carry away' (move slightly) the property in question, so too robbery under the traditional view requires both a taking[12] and an asportation (in the sense of at least a slight movement) of the property.").

[119] Model Penal Code § 222.1 ("An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission.").

[120] Ala. Code § 13A-8-40; Alaska Stat. Ann. § 11.41.510; State v. Ali, 886 A.2d 449, 451 (Conn. App. Ct. 2005); Del. Code Ann. tit. 11, § 831; Haw. Rev. Stat. Ann. § 708-842; Morgan v. Com., 730 S.W.2d 935 (Ky. 1987); Me. Rev. Stat. tit. 17-A, § 651; Mont. Code Ann. § 45-5-401; N.D. Cent. Code Ann. § 12.1-22-01; N.H. Rev. Stat. Ann. § 636:1; N.J. Stat. Ann. § 2C:15-1; Ohio Rev. Code Ann. § 2911.02; Or. Rev. Stat. Ann. § 164.395; 18 Pa. Stat. Stat. Ann. § 3701; Tex. Penal Code Ann. § 29.01; Utah Code Ann. § 76-6-301.