



First Draft of Report #31 -
Escape from Institution or Officer

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.

This Draft Report has two parts: (1) draft statutory text for an enacted Title 22 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 #31 - *Escape from Institution or Officer* is March 1, 2019 (nine weeks from the date of issue, which includes a two-week extension from the initial deadline due to the federal shutdown). Oral comments and written comments received after March 1, 2019 may not be reflected in the next draft or final recommendation. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

RCC § 22E-3401. Escape from Institution or Officer.

- (a) *Escape from Institution or Officer.* A person commits escape from institution or officer when that person:
- (1) In fact:
 - (A) Is subject to a court order that authorizes the person's confinement in a correctional facility; or
 - (B) Is in the lawful custody of a law enforcement officer of the District of Columbia or of the United States; and
 - (2) Knowingly, without the effective consent of the correctional facility or law enforcement officer:
 - (A) Leaves custody;
 - (B) Fails to return to custody; or
 - (C) Fails to report to custody.
- (b) *Gradations and Penalties.*
- (1) *First Degree.* A person commits first degree escape from institution or officer when that person violates subsection (a)(2)(A). First degree escape from institution or officer is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) *Second Degree.* A person commits second degree escape from institution or officer when that person violates subsection (a)(2)(B) or (C). Second degree escape from institution or officer is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (3) *Consecutive Sentencing.* If the person is serving a sentence at the time escape from institution or officer is committed, the sentence for escape from institution or officer shall run consecutive to the sentence that is being served at the time of the escape from institution or officer.
- (c) *Definitions.* In this section:
- (1) The term "knowingly" has the meaning specified in § 22E-206; "in fact" has the meaning specified in § 22E-207;
 - (2) The term "effective consent" has the meaning specified in § 22E-1001;
 - (3) The terms "law enforcement officer" and "building" have the meanings specified in § 22E-2001; and
 - (4) The term "correctional facility" means:
 - (A) Any building or building grounds located in the District of Columbia operated by the Department of Corrections for the secure confinement of persons charged with or convicted of a criminal offense;
 - (B) Any building or building grounds located in the District of Columbia used for the confinement of persons participating in a work release program; or
 - (C) Any building or building grounds, whether located in the District of Columbia or elsewhere, operated by the Department of Youth Rehabilitation Services for the secure confinement of persons committed to the Department of Youth Rehabilitation Services.

COMMENTARY

Explanatory Note. *This section establishes the escape from institution or officer offense for the Revised Criminal Code (RCC). The offense prohibits knowingly absconding from the lawful custody of a government actor or agency. It replaces D.C. Code § 22-2601, Escape from institution or officer, and D.C. Code § 10-509.01a,¹ Escape from juvenile facilities.*

Subsection (a)(1) specifies that no culpable mental state applies to the circumstances in subsections (a)(1)(A) and (a)(1)(B). Per the rules of interpretation in RCC § 22E-207, the phrase “in fact” indicates that the accused is strictly liable with respect to whether he or she was under court order or lawful arrest at the time the elements of the escape offense were completed.²

Subsection (a)(1)(A) specifies that the first type of individual subject to an escape is a person subject to a court-issued detention or commitment order confining the person to a correctional facility. The term “court order” includes any judicial directive, oral or written. The word “authorizing” makes clear that an order permitting a custodial agency³ to choose a secured or unsecured residential placement is sufficient.⁴ “Correctional facility” is defined in subsection (c)(3) and includes secured buildings such as jails and juvenile detention centers as well as halfway houses.

Subsection (a)(1)(B) states that the second type of person subject to liability for escape is a person who is in the lawful custody of a law enforcement officer. “Custody”⁵ requires a completed arrest;⁶ there must be actual physical restraint or submission of the person to arrest.⁷ Efforts to evade arrest may create liability for resisting arrest,⁸ but not escape.⁹ For example, custody may include being detained by an officer on the street, being securely confined to a holding cell, and being securely transported to a court appearance or medical facility.¹⁰ The term “law enforcement officer” is defined in RCC § 22E-1001 and includes persons with limited arrest powers, such as special police officers¹¹ and community supervision officers acting in their official capacity,¹² but

¹ The penalty for this offense appears in § 10-509.03.

² A good faith belief that the order was expired or vacated is not a defense.

³ E.g., Department of Corrections, Bureau of Prisons, United States Parole Commission, Department of Youth Rehabilitation Services.

⁴ For example, if a person who was ordered to participate in a work release program violates the rules of the program and is administratively remanded to D.C. Jail, that person may not escape from D.C. Jail and defend on grounds that the court order did not explicitly “require” him to stay at the jail.

⁵ Fourth Amendment law distinguishes between a detention and an arrest, whereas Fifth Amendment jurisprudence differentiates between a seizure and custody. *Davis v. United States*, 166 A.3d 944, 949 (D.C. 2017).

⁶ *Davis v. United States*, 166 A.3d 944, 947 (D.C. 2017).

⁷ *Davis v. United States*, 166 A.3d 944, 948 (D.C. 2017).

⁸ D.C. Code § 22-405.01.

⁹ *Davis v. United States*, 166 A.3d 944, 948 (D.C. 2017).

¹⁰ See D.C. Code §§ 22-3001(6)(A) and (B).

¹¹ D.C. Code § 23-582(a).

¹² 18 U.S.C. § 3606; see also 2017 H.R. 1039, the Probation Officer Protection Act of 2017 (a proposal to extend federal probation officers’ arrest authority beyond supervisees to third parties who physically obstruct an officer or cause an officer physical harm).

excludes private actors who are performing a citizen's arrest.¹³ The officer must be employed by the District or federal government. For escape liability, the custody must, in fact, be lawful. Where a law enforcement officer has detained a person without requisite cause or authority, in violation of any federal or District law, the person is not in lawful custody.

Subsections (a)(1)(A) and (a)(1)(B) are disjunctive. Part (A) is intended to cover all prosecutions for escape and attempted escape from a correctional facility and part (B) is intended to cover all prosecutions for escape and attempted escape outside of those settings.¹⁴

Subsection (a)(2) specifies that the person must act knowingly, a term defined in the general part of the revised code.¹⁵ Applied here, it means the person must be practically certain that they do not have the effective consent of the correctional facility or the law enforcement officer to leave or remain out of custody.¹⁶ Effective consent is a defined term and means consent that was not obtained by coercion or deception.¹⁷ The person must be practically certain that her conduct will cause an unlawful absence.¹⁸ The person must know he is either not allowed to leave a correctional facility or is required to return.¹⁹ In the case of flight from a law enforcement officer, the person must know that the person detaining her is a law enforcement officer.²⁰

Subsections (a)(2)(A)-(C) describe three different means of absconding in violation of the revised escape statute. Under subsection (a)(2)(A), leaving custody is the first type of unlawful absence. In the context of a secured facility²¹ or a halfway house,²² a person leaves custody when they depart from the areas of the premises to which they are confined.²³ In the context of fleeing from an officer who is physically restraining them or to whose arrest they have submitted, a person leaves when they distance

¹³ See D.C. Code § 23-582(b).

¹⁴ For example, it would be improper to charge a person under (a)(1)(B) for escaping the grasp of a corrections officer inside of D.C. Jail. *See Brawner v. United States*, 979 A.2d 1191 (D.C. 2009) (reversing a conviction where jury instructions included references to both an escape from an institution and an escape from an officer).

¹⁵ RCC § 22E-206.

¹⁶ This element is consistent with federal escape case law. "Although § 751(a) does not define the term 'escape,' courts and commentators are in general agreement that it means absenting oneself from custody without permission." *United States v. Bailey*, 444 U.S. 394, 407 (1980).

¹⁷ RCC § 22E-1001. Accordingly, a person who obtains permission to leave by impersonating another inmate or an employee commits an escape.

¹⁸ For example, a person who mistakenly reports to the wrong address or who mistakenly returns at the wrong time has not committed an escape.

¹⁹ Where an individual employee of the detaining agency allows a person to leave without requisite authority from the warden or from the court, liability for the escape offense likely turns on the defendant's mental state. A person who is erroneously told she is free to leave may not commit an escape, whereas a person who bribes the employee to release her does commit an escape because she was practically certain she did not have the facility's effective consent and that the employee was acting *ultra vires*.

²⁰ Consider, for example, a person who is tackled by an undercover officer and cannot understand the officer identifying himself as a policeman.

²¹ RCC § 22E-3401(c)(3)(A).

²² RCC § 22E-3401(c)(3)(B).

²³ It is not a defense that the person was still on prison grounds at the time of apprehension.

themselves from the officer in an effort to avoid apprehension.²⁴ Under subsections (a)(2)(B) and (a)(2)(C), a person may commit an escape by omission. Failing to return to custody after a lawful absence²⁵ or failing to report to custody as ordered amounts to an escape.²⁶

Subsection (b) states the gradations for the revised offense. The revised statute punishes flight more severely than a failure to report or return. Subsection (b) specifies the penalties for each grade of the revised offense. [RESERVED.]

Subsection (c) cross-references applicable definitions located elsewhere in the RCC and provides a definition for “correctional facility.” The term “correctional facility” refers to buildings and their grounds that are used by the Department of Corrections to confine people securely. It does not include facilities such as behavioral health hospitals that are principally concerned with providing medical care. It does not include buildings used by private businesses to detain suspected criminals.²⁷ With the exception of halfway houses, the definition excludes unsecured facilities such as inpatient drug treatment programs and independent living programs. The term “building” is defined in § 22E-2001 and means “a structure affixed to land that is designed to contain one or more human beings.” Building grounds refers to the area of land occupied by the correctional facility and its yard and outbuildings, with a clearly identified perimeter.²⁸ Subsection (c)(3)(A) and (B) require that adult detention centers and halfway houses²⁹ be located in the District of Columbia,³⁰ but subsection (c)(3)(C) provides that youth detention centers may be located outside the city limits.³¹

Relation to Current District Law. *The revised escape statute changes current law in five ways to improve the clarity, consistency, and proportionality of the offense.*

First, the revised escape offense has two gradations. The current statute provides only one penalty for all escape offenses.³² Thus, under current law, a person who returns late to a work release program faces the same maximum penalty as a person who tunnels out of D.C. Jail.³³ Notably, a failure to return to a halfway house may, alternatively, be

²⁴ For example, a person who maneuvers her way out of handcuffs but stays seated in a police car has not committed a completed escape. On the other hand, a person who remains handcuffed and runs three blocks may have committed an escape.

²⁵ E.g., work release, furlough.

²⁶ See *Williams v. United States*, 832 A.2d 158 (D.C. 2003) (where the defendant failed to serve all required consecutive weekends at D.C. Jail); *Mundine v. United States*, 431 A.2d 16 (D.C. 1981) (where the defendant failed to report to DC halfway house after being released in Virginia).

²⁷ For example, a person who runs from the booking room of a retail store does not commit an escape under RCC § 22E-3401(a)(1)(A).

²⁸ See, e.g., D.C. Code § 22-2603.01.

²⁹ A person who is serving a prison sentence may be granted the privilege of work release by a sentencing court, the Department of Corrections, or the Board of Parole. D.C. Code § 24-241.02.

³⁰ See *Rivers v. United States*, 1975, 334 A.2d 179.

³¹ For example, New Beginnings Youth Development Center is located on federal land outside of the city’s boundaries. See § 10-509.01.

³² D.C. Code § 22-2601.

³³ Although the verb “escape” is not defined in the statute, District case law has held that escape is “knowingly or deliberately leaving physical confinement, *or failing to return to it*, without permission.” *Hines v. United States*, 890 A.2d 686 (D.C. 2006) (emphasis added); see also *Days v. United States*, 407 A.2d 702, 704 (D.C. 1979) (finding the extension of leave beyond that which is granted is the legal equivalent of an escape).

prosecuted as a misdemeanor by the Attorney General for the District of Columbia,³⁴ whereas there is no alternative charge in District law for a conventional prison break. In contrast, the revised offense distinguishes between fleeing from custody and failing to timely return. Fleeing from custody is more likely to provoke a hot pursuit, which may endanger the arresting officers, the defendant, and bystanders. This change improves the proportionality of the revised offenses.

Second, the revised statute punishes an attempt to escape in a manner consistent with other revised offenses. Current D.C. Code § 22-2601 punishes an attempt to escape the same as a completed escape.³⁵ In contrast, the revised code relies on the general part's common definition of attempt³⁶ and penalty for an attempt.³⁷ This change improves the consistency and proportionality of the revised offenses.

Third, the revised statute punishes accomplice liability consistently with other revised offenses. Current D.C. Code § 10-509.01a, Escape from juvenile facilities, prohibits escaping, attempting to escape, or aiding or abetting an escape from a juvenile facility. In contrast, the revised escape statute relies on the definition of accomplice liability in the revised code's general part,³⁸ as well as related provisions that establish a rule for crimes that exploit other persons as innocent instruments,³⁹ and carves out exceptions to accomplice liability.⁴⁰ This change improves the consistency and the proportionality of revised offenses.

Fourth, the revised statute requires the person whose personal custody is escaped be a law enforcement officer and defines the term "law enforcement officer"⁴¹ consistently with other revised offenses. Current D.C. Code § 22-2601(a)(2) prohibits escaping the lawful custody of "an officer or employee of the District of Columbia or of the United States." In contrast, the revised code clarifies that the person must be a law enforcement officer, as defined, who is acting within their arrest authority.⁴² While the revised definition of law enforcement officer is broad and includes individuals such as probation officers, the revised definition is narrower than the current statute's reference to any person employed by the District or federal government. This change improves the clarity and consistency of the revised code.

Fifth, the RCC contains merger provisions that describe when a conviction for escape from institution or officer and another conviction arising from the same course of conduct merge. The current escape statute and District case law are silent as to whether convictions for escape and other offenses merge. However, the current escape statute and D.C. Code § 23-1329, violation of conditions of release, do not appear to satisfy an elements test⁴³ as required for the DCCA to require merger. In contrast, the RCCs general provisions describe when a conviction for escape from institution or officer and

³⁴ D.C. Code § 24-241.05(b).

³⁵ The statute begins "No person shall escape or attempt to escape..."

³⁶ RCC § 22E-301(a).

³⁷ RCC § 22E-301(c)(1).

³⁸ RCC § 22E-210.

³⁹ RCC § 22E-211.

⁴⁰ RCC § 22E-212.

⁴¹ RCC § 22E-1001.

⁴² For example, if a person who happens to be a probation officer performs a citizen's arrest on personal time of someone who is not their supervisee, fleeing from that officer would not amount to an escape.

⁴³ *Byrd v. United States*, 598 A.2d 386, 390 (D.C. 1991) (*en banc*).

another conviction arising from the same course of conduct may merge, including charges for violation of conditions of release.⁴⁴ This change improves the proportionality of the revised statutes.

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

The revised code more precisely defines the term “correctional facility.” The current escape statute uses the phrase “penal or correctional facility,” but does not define it. DCCA case law has held that, in addition to the Central Detention Facility (“D.C. Jail”), the term also includes the District’s halfway houses.⁴⁵ Case law is silent as to whether any other locations qualify. The revised offense defines “correctional facility” so as to include any jails and prisons that are or may be erected in the District,⁴⁶ any building that operates as a halfway house,⁴⁷ and secured juvenile detention facilities located anywhere.⁴⁸ With respect to persons who are committed to the Department of Youth and Rehabilitation Services (“DYRS”), the revised statute replaces the phrase “an institution or facility”⁴⁹ with “any building...for the secure confinement of persons committed to the Department of Youth Rehabilitation Services.” The word “secure” makes clear that placement at home or in a community-based residential facility⁵⁰ is excluded.⁵¹ This change improves the clarity and consistency of the revised offenses.

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

First, the revised statute specifies that a “knowing” culpable mental state is required for leaving custody or failure to return or report to custody, and for lacking effective consent to do so. The current escape statute does not specify any culpable mental state. However, the DCCA has explained that escaping is “knowingly or deliberately leaving physical confinement, or failing to return to it, without permission.”⁵² The revised statute clarifies that the accused must be practically certain that he or she is

⁴⁴ The harms are substantially similar in escape from institution or officer and violation of conditions of release, and failure to merge such convictions could lead to disparate outcomes when similarly situated defendants are convicted (or possibly charged) with different combinations of the two offenses. [The Commission may update future commentary to RCC § 22E-214 to note the intended merger relationship between escape from institution or officer and violation of conditions of release.]

⁴⁵ See *Demus v. United States*, 710 A.2d 858, 861 (D.C.1998); *Gonzalez v. United States*, 498 A.2d 1172, 1174 (D.C.1985); *Hines v. United States*, 890 A.2d 686, 689 (D.C. 2006).

⁴⁶ RCC § 22E-3401(c)(3)(A). The District currently has two buildings that meet this criterion, both located on the same campus: the Central Detention Facility (“D.C. Jail”) and the Central Treatment Facility (“CTF”).

⁴⁷ RCC § 22E-3401(c)(3)(B)

⁴⁸ The District currently has two buildings that meet this criterion: the Youth Services Center (located inside the District of Columbia) and New Beginnings Youth Development Center (located outside the District of Columbia).

⁴⁹ D.C. Code § 22-2601(a)(3).

⁵⁰ Community-based residential facilities include group homes, therapeutic foster care, extended family homes, and independent living programs.

⁵¹ The inclusion of unsecured placement means every curfew violation by a person in a halfway house constitutes escape from institution or officer. Note, however, that the revised code also includes a *de minimus* provision at RCC § 22E-[X].

⁵² *Hines v. United States*, 890 A.2d 686 (D.C. 2006).

acting without permission. Consequently, a mistake of fact is an available defense in some, but not all, cases.⁵³ Applying a knowledge or intent requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.⁵⁴ This change clarifies the revised statute.

Second, the revised statute specifies that whether a person is subject to a court order or in lawful custody of a law enforcement officer is a matter of strict liability. The current escape statute does not specify any culpable mental state for this offense element, nor has the DCCA addressed the matter. The revised statute resolves this ambiguity by not requiring any culpable mental state as to being subject to a court order or as to the lawfulness of the custody. For example, a person who mistakenly believes an arrest warrant is invalid, nevertheless commits an escape, if all of the offense elements are satisfied, including the fact that the person knew they lacked effective consent of the institution or officer. It is generally recognized that a person may be held strictly liable for elements of an offense that do not distinguish innocent from guilty conduct.⁵⁵ This change clarifies the revised statutes.

Third, the revised statute requires the accused to leave or fail to return without “effective consent.” The current escape statute is silent as to whether lack of effective consent to the person’s behavior, or a similar element, must be proven. District case law requires the accused escape without “permission,” but does not specify whose permission is required or further define that term.⁵⁶ The revised statute requires a lack of “effective consent,” a defined term which means consent obtained by means other than coercion or deception.⁵⁷ This change improves the revised offenses by describing all elements that must be proven and applying consistent definitions throughout the revised code.

Fourth, the revised statute codifies a clear consecutive sentencing provision. Current D.C. Code § 22-2601(b) states in pertinent part, that the “...sentence [is] to begin, if the person is an escaped prisoner, upon the expiration of the original sentence or disposition for the offense for which he or she was confined, committed, or in custody at the time of his or her escape.” The DCCA has interpreted the phrase “original sentence” to mean the sentence being served at the time of the escape.⁵⁸ The revised statute more concisely states that the sentence for escape is to be served consecutive to the sentence being served during the escape. This change clarifies the revised statutes.

Fifth, the revised code has a general duress defense⁵⁹ that is consistent with other revised offenses. The current statute is silent as to whether any duress offense exists to

⁵³ For example, a person who mistakenly appears at the wrong halfway house is not liable for escape.

⁵⁴ 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)”).

⁵⁵ See *Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015). (“When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute ‘only that mens rea which is necessary to separate wrongful conduct from ‘otherwise innocent conduct.’” *Carter v. United States*, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000) (quoting *X-Citement Video*, 513 U.S., at 72, 115 S.Ct. 464).”)

⁵⁶ *United States v. Bailey*, 444 U.S. 394, 407 (1980); *Hines v. United States*, 890 A.2d 686 (D.C. 2006).

⁵⁷ RCC § 22E-1001.

⁵⁸ *Veney v. United States*, 738 A.2d 1185, 1199 (D.C. 1999) (requiring resentencing for a person who escaped during a street encounter).

⁵⁹ [A recommendation to codify this general defense is planned, but has not yet been completed, by the Commission.]

escape. However, District case law has recognized a duress defense to escape in limited circumstances.⁶⁰ The revised statute does not separately codify a duress defense to escape, but instead relies on the duress defense in the general part of the RCC. This change clarifies and improves the consistency of the revised statutes.

Relation to National Legal Trends. The revised escape statute's above-mentioned changes to current District law have mixed support in national legal trends.

Twenty-nine states (hereafter “reform jurisdictions”) have comprehensively modernized their criminal laws based in part on the Model Penal Code.⁶¹ All 29 reform jurisdictions have one or more criminal escape statutes.⁶²

First, most reform jurisdictions and the Model Penal Code⁶³ have multiple sentencing gradations for escape. Nineteen reform jurisdictions grade offenses based on use of force, threat of force, or possession of a weapon.⁶⁴ Fifteen reform jurisdictions consider the seriousness of the charge underlying the detention (felony or misdemeanor).⁶⁵ Although few reform jurisdictions explicitly distinguish between

⁶⁰ *Stewart v. United States*, 370 A.2d 1374 (D.C. 1977).

⁶¹ The 29 states are: Alabama; Alaska; Arizona; Arkansas; Colorado; Connecticut; Delaware; Hawaii; Illinois; Indiana; Kansas; Kentucky; Maine; Minnesota; Missouri; Montana; New Hampshire; New Jersey; New York; North Dakota; Ohio; Oregon; Pennsylvania; South Dakota; Tennessee; Texas; Utah; Washington; Wisconsin. See Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 NEW CRIM. L. REV. 319, 326 (2007).

⁶² Ala. Code §§ 13A-10-30, 13A-10-31, 13A-10-32, 13A-10-33, and 14-8-42; Alaska Stat. Ann. §§ 11.56.300, 11.56.310, 11.56.320, 11.56.330, and 11.56.370; Ariz. Rev. Stat. Ann. § 13-2501, 13-2502, 13-2503, and 13-2504; Ark. Code Ann. §§ 5-54-101, 5-54-110, 5-54-111, 5-54-112, and 5-54-131; Colo. Rev. Stat. Ann. §§ 18-8-208 and 18-8-208.1; Conn. Gen. Stat. Ann. §§ 53a-168, 53a-169, 53a-170, and 53a-171; Del. Code Ann. tit. 11, §§ 1251, 1252, 1253, and 1258; Haw. Rev. Stat. Ann. §§ 710-1020 and 710-1021; 720 Ill. Comp. Stat. Ann. 5/31-6 and 720 Ill. Comp. Stat. Ann. 5/31-7; Ind. Code Ann. § 35-44.1-3-4; Kan. Stat. Ann. § 21-5911; Ky. Rev. Stat. Ann. §§ 520.010, 520.015, 520.020, 520.030, and 520.040; Me. Rev. Stat. tit. 17-A, § 755; Minn. Stat. Ann. § 609.485; Mo. Ann. Stat. §§ 575.195, 575.200, 575.210, and 575.220; Mont. Code Ann. § 45-7-306; N.H. Rev. Stat. Ann. § 642:6; N.J. Stat. Ann. § 2C:29-5; N.Y. Penal Law §§ 205.00, 205.10, 205.15, 205.16, 205.17, 205.18, and 205.19; N.D. Cent. Code Ann. § 12.1-08-06; Ohio Rev. Code Ann. § 2921.34; Or. Rev. Stat. Ann. §§ 162.145, 162.155, 162.165, and 162.175; 18 Pa. Stat. and Cons. Stat. Ann. § 5121; S.D. Codified Laws §§ 22-11A-1, 22-11A-2, and 22-11A-2.1; Tenn. Code Ann. § 39-16-605; Tex. Penal Code Ann. § 38.06; Utah Code Ann. § 76-8-309; Wash. Rev. Code Ann. §§ 9A.76.110, 9A.76.115, 9A.76.120, and 9A.76.1130; Wis. Stat. Ann. § 946.42.

⁶³ Model Penal Code § 242.6(4).

⁶⁴ Ala. Code §§ 13A-10-31(a)(1) and 13A-10-32(a)(1); Alaska Stat. Ann. §§ 11.56.300(a) and 11.56.310(a)(1)(C); Ariz. Rev. Stat. Ann. § 13-2504; Ark. Code Ann. §§ 5-54-110, 5-54-111; Del. Code Ann. tit. 11, § 1253; Haw. Rev. Stat. Ann. § 710-1020; Ind. Code Ann. § 35-44.1-3-4(Sec. 4(a)); Kan. Stat. Ann. § 21-5911(b)(1)(G); Ky. Rev. Stat. Ann. § 520.020; Me. Rev. Stat. tit. 17-A, § 755; N.H. Rev. Stat. Ann. § 642:6; N.J. Stat. Ann. § 2C:29-5; N.D. Cent. Code Ann. § 12.1-08-06(2); Or. Rev. Stat. Ann. §§ 162.145, 162.155, 162.165, and 162.175; 18 Pa. Stat. and Cons. Stat. Ann. § 5121(d); S.D. Codified Laws § 22-11A-2(1); Tex. Penal Code Ann. § 38.06; Utah Code Ann. § 76-8-309(2)(a); and Wis. Stat. Ann. § 946.42; see also Model Penal Code § 242.6(4)(b).

⁶⁵ Ala. Code §§ 13A-10-31(a)(2), 13A-10-32(a)(2), and 13A-10-33; Alaska Stat. Ann. §§ 11.56.320(a)(1), 11.56.330(a)(1); Ariz. Rev. Stat. Ann. §§ 13-2502(A), 13-2503(A)(2); Colo. Rev. Stat. Ann. § 18-8-208; Conn. Gen. Stat. Ann. § 53a-171(b); 720 Ill. Comp. Stat. Ann. 5/31-6; Kan. Stat. Ann. § 21-5911(b)(1)(A); Ky. Rev. Stat. Ann. § 520.030; Minn. Stat. Ann. § 609.485 (Subd. 4); N.Y. Penal Law §§ 205.10, 205.15, and 205.16; N.D. Cent. Code Ann. § 12.1-08-06(2)(b); Ohio Rev. Code Ann. § 2921.34(C)(2); 18 Pa. Stat. and Cons. Stat. Ann. § 5121(d); Tenn. Code Ann. § 39-16-605(c)(1); and Wash. Rev. Code Ann. §§ 9A.76.110, 9A.76.120, and 9A.76.130; see also Model Penal Code § 242.6(4)(a).

fleeing from custody and failing to timely return,⁶⁶ several others punish prison breaks more harshly than other unlawful absences.⁶⁷

Second, the removal of attempted escapes from the offense definition is broadly supported by national trends. Only four reform jurisdictions punish attempted escapes as harshly as the completed offense.⁶⁸

Third, the revised statute's omission of an accomplice liability provision specific to escape is supported by national trends. Sixteen reform states punish permitting or facilitating an escape.⁶⁹ However, most of these provisions apply only to public servants who violate their official duties, in contrast to D.C. Code § 10-509.01a, which states, "No person shall aid or abet any person to violate this section."⁷⁰ Notably, there is variance among states with respect to how the act of harboring a fugitive is punished. Some, like the District, punish it as accessory-after-the-fact to escape, whereas others punish it as obstruction of justice or hindering prosecution.⁷¹

Fourth, support for the revised statute's restriction to flight from the lawful custody of a "law enforcement officer" as defined throughout the RCC is difficult to assess. States use a range of terminology to describe the person whose custody is escaped and the nature of the custody⁷² and staff did not research statutory or case law definitions for that terminology.

Fifth, the reform jurisdictions do not include a merger provision for convictions of contempt based on the same course of conduct. Research was not conducted to determine whether the offenses would merge under a general merger provision or under the elements test in other states.

⁶⁶ 720 Ill. Comp. Stat. Ann. 5/31-6; Ind. Code Ann. § 35-44.1-3-4; Mo. Ann. Stat. § 575.220; N.Y. Penal Law §§ 205.17 and 205.18 ("absconding"); S.D. Codified Laws §§ 22-11A-2 and 22-11A-2.1; Wash. Rev. Code Ann. § 9A.76.120(c); *see also* Wis. Stat. Ann. § 946.425 (Failure to report to jail).

⁶⁷ Some states grade escapes from the custody of an officer lower than escapes from an institution. Others grade escapes from a non-secure location (such as a halfway house or house arrest) lower than escapes from a secured facility. Others do not include failures to return in their escape statutes at all. *See e.g.*, Alaska Stat. Ann. §§ 11.56.335 and 11.56.340 ("unlawful evasion"); Ark. Code Ann. § 5-54-131 ("absconding" from house arrest); Conn. Gen. Stat. Ann. § 53a-170; Del. Code Ann. tit. 11, § 1251-1253; Me. Rev. Stat. tit. 17-A, § 755; Mo. Ann. Stat. § 575.200; Tex. Penal Code Ann. § 38.06.

⁶⁸ Ala. Code §§ 13A-10-31(a)(2), § 13A-10-32(a)(2), and 13A-10-33(a); Ariz. Rev. Stat. Ann. §§ 13-2502, 13-2503, and 13-2504; N.D. Cent. Code Ann. § 12.1-08-06(1); and Ohio Rev. Code Ann. § 2921.34.

⁶⁹ Ala. Code §§ 13A-10-35 and 36; Alaska Stat. Ann. § 11.56.370; Ark. Code Ann. §§ 5-54-113, 115, and 116; Colo. Rev. Stat. Ann. §§ 18-8-201, 201.1, and 205; 720 Ill. Comp. Stat. Ann. 5/31-7; Kan. Stat. Ann. § 21-5912; Me. Rev. Stat. tit. 17-A, § 756; Minn. Stat. Ann. § 609.485 (Subd. 2)(3); Mo. Ann. Stat. §§ 575.230 and 575.240; N.J. Stat. Ann. § 2C:29-5(c); N.D. Cent. Code Ann. § 12.1-08-07; Ohio Rev. Code Ann. § 2921.35; 18 Pa. Stat. and Cons. Stat. Ann. § 5121(b); Tenn. Code Ann. § 39-16-607; Tex. Penal Code Ann. § 38.07; Wis. Stat. Ann. § 946.44; *see also* Conn. Gen. Stat. Ann. § 53a-171a (concerning escapes from a hospital or sanatorium). States vary with respect to whether the act of harboring a fugitive is punished as accessory to escape, obstruction of justice, or hindering prosecution.

⁷⁰ [Public corruption offenses will be addressed in another section of the revised code.]

⁷¹ *See, e.g.*, Haw. Rev. Stat. Ann. § 710-1028(1); 720 Ill. Comp. Stat. Ann. 5/31-5; Ky. Rev. Stat. Ann. § 520.120; Me. Rev. Stat. tit. 17-A, § 753; Minn. Stat. Ann. § 609.495; Mo. Ann. Stat. §§ 575.030, 575.159, Mont. Code Ann. § 45-7-303; N.H. Rev. Stat. Ann. § 642:3; N.Y. Penal Law §§ 205.50, 205.55, 205.60, and 205.65; S.D. Codified Laws § 22-11A-5; Tex. Penal Code Ann. § 38.05; Wash. Rev. Code Ann. §§ 9A.76.050, 9A.76.060, 9A.76.070, 9A.76.080, and 9A.76.090; Wis. Stat. Ann. § 946.47.

⁷² For example, the Model Penal code uses terms that may be congruent with "the lawful custody of a law enforcement officer," such as "official detention," "arrest," and "public servant." Model Penal Code § 242.6.