



Recommendations for Chapter 1 of the Revised Criminal Code: Preliminary Provisions

FIRST DRAFT OF REPORT NO. 4 SUBMITTED FOR ADVISORY GROUP REVIEW
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First Draft of Report No. 4, Recommendations for Chapter 1 of the Revised Criminal Code—
Preliminary Provisions

This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at www.ccrdc.dc.gov.

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

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

The deadline for the Advisory Group's written comments on this First Draft of Report No. 4, *Recommendations for Chapter 1 of the Revised Criminal Code — Preliminary Provisions*, is April 24, 2017 (six weeks from the date of issue). Oral comments and written comments received after April 24, 2017 will not be reflected in the Second Draft of Report No. 4. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

Subtitle I. General Part
Chapter 1. Preliminary Provisions

Section 101	Short Title and Effective Date
Section 102	Rules of Interpretation
Section 103	Interaction of Title 22A With Other District Laws
Section 104	Applicability of the General Part

§ 22A-101 SHORT TITLE AND EFFECTIVE DATE

- (a) **SHORT TITLE.** This title may be cited as the “Revised Criminal Code.”
- (b) **EFFECTIVE DATE.** This title takes effect at 12:01 am on [A DATE AT LEAST ONE YEAR FROM ENACTMENT].
- (c) **PRIOR OFFENSES.** Offenses committed prior to the effective date of the Revised Criminal Code are subject to laws in effect at that time. For purposes of this subsection, an offense is “committed prior to the effective date” if any one of the elements of the offense was satisfied prior to the effective date.

COMMENTARY

1. § 22A-101 -- Short Title and Effective Date.

Explanatory Note. This section provides a short title for the Revised Criminal Code and provisions necessary for an orderly transition. The section ensures that implementation of the Revised Criminal Code will not raise *ex post facto* concerns under the U.S. Constitution by establishing that the Revised Criminal Code does not apply to conduct committed prior to the effective date. Such conduct is instead governed by prior laws, which remain in force solely to deal with these prosecutions.

Relation to Current District Law. This section is in accordance with, but fills a gap in, District law. The use of a short title for a section of the D.C. Code is common practice.¹ Also, several Titles of the D.C. Code set a specific effective date by their own terms.² With respect to subsection (c), D.C. Code § 45-404 states that repeal of an act of the Council does not “release or extinguish any penalty . . . incurred pursuant to the act,” and that “the [repealed] act shall be treated as remaining in force for the purpose of sustaining any . . . prosecution for the enforcement of any penalty” This “savings” statute has been used to ensure that crimes

¹ See, e.g., D.C. Code § 19-1301.01 (“This chapter may be cited as the ‘Uniform Trust Code.’”); D.C. Code § 29-101.01(a) (“This title may be cited as the ‘Business Organizations Code.’”); D.C. Code § 46-351.01 (“This chapter may be cited as the Uniform Interstate Family Support Act.”).

² See, e.g., D.C. Code § 2-118 (“This subchapter shall become effective 6 months from the date of their [sic] approval.”).

committed prior to a change in a criminal law are prosecuted under the prior version.³ However, neither the savings statute nor any other statute in the D.C. Code states when a penalty is “incurred” under a repealed law. Nor has the DCCA clarified the matter. To resolve this ambiguity and fill a gap in District law, subsection (c) states that if a single element of a crime is committed before the effective date of the Revised Criminal Code, then the superseded law should apply.

Relation to National Legal Trends. Many states that have enacted comprehensive code reforms have added a short title,⁴ set a prospective effective date,⁵ and provided precise rules for determining when a crime occurs with respect to the effective date.⁶ Similar provisions are part of the Model Penal Code and other proposed reform efforts.⁷

³ See *Holiday v. United States*, 683 A.2d 61, 80 (D.C. 1996) (“The general savings statutes, therefore . . . preserve mandatory-minimum sentences in all cases where the offense was committed” before repeal of the mandatory minimum).

⁴ Ala. Code § 13A-1-1; Ark. Code Ann. § 5-1-101; Colo. Rev. Stat. Ann. § 18-1-101; Conn. Gen. Stat. Ann. § 53a-1; Del. Code Ann. tit. 11, § 101; Ga. Code Ann. § 16-1-1; Haw. Rev. Stat. Ann. § 701-100; 720 Ill. Comp. Stat. Ann. 5/1-1; Iowa Code Ann. § 701.1; Kan. Stat. Ann. § 21-5101; Ky. Rev. Stat. Ann. § 500.010; Me. Rev. Stat. tit. 17-A, § 1; Minn. Stat. Ann. § 609.01; Mo. Ann. Stat. § 556.011; Mont. Code Ann. § 45-1-101; Neb. Rev. Stat. Ann. § 28-101; N.H. Rev. Stat. Ann. § 625:1; N.J. Stat. Ann. § 2C:1-1; N.M. Stat. Ann. § 30-1-1; N.Y. Penal Law § 1.00; N.D. Cent. Code Ann. § 12.1-01-01; Or. Rev. Stat. Ann. § 161.005; 18 Pa. Stat. and Cons. Stat. Ann. § 101; Tex. Penal Code Ann. § 1.01; Utah Code Ann. § 76-1-101; Wash. Rev. Code Ann. § 9A.04.010; Wyo. Stat. Ann. § 6-1-101.

⁵ Ala. Code § 13A-1-11; Ark. Code Ann. § 5-1-103; Colo. Rev. Stat. Ann. § 18-1-103; Conn. Gen. Stat. Ann. § 53a-2; Del. Code Ann. tit. 11, § 103; Ga. Code Ann. § 16-1-9; Haw. Rev. Stat. Ann. § 701-100; Kan. Stat. Ann. § 21-5103; Me. Rev. Stat. tit. 17-A, § 1; Mo. Ann. Stat. § 556.031; Mont. Code Ann. § 45-1-103; Neb. Rev. Stat. Ann. § 28-103; N.H. Rev. Stat. Ann. § 625:2; N.J. Stat. Ann. § 2C:1-1; Or. Rev. Stat. Ann. § 161.035; Utah Code Ann. § 76-1-102; Va. Code Ann. § 18.2-2; Wash. Rev. Code Ann. § 9A.04.010.

⁶ Ala. Code § 13A-1-7; Ariz. Rev. Stat. Ann. § 13-101; Ark. Code Ann. § 5-1-103; Colo. Rev. Stat. Ann. § 18-1-103; Del. Code Ann. tit. 11, § 102; Ga. Code Ann. § 16-1-9; Haw. Rev. Stat. Ann. § 701-101; Kan. Stat. Ann. § 21-5103; Me. Rev. Stat. tit. 17-A, § 1; Mo. Ann. Stat. § 556.031; Mont. Code Ann. § 45-1-103; Neb. Rev. Stat. Ann. § 28-103; N.H. Rev. Stat. Ann. § 625:2; N.J. Stat. Ann. § 2C:1-1; N.M. Stat. Ann. § 30-1-2; N.Y. Penal Law § 5.05; N.D. Cent. Code Ann. § 12.1-01-01; Or. Rev. Stat. Ann. § 161.03; Utah Code Ann. § 76-1-103; Va. Code Ann. § 18.2-2; Wash. Rev. Code Ann. § 9A.04.010; Wyo. Stat. Ann. § 6-1-101.

⁷ Model Penal Code § 1.01 *et seq.*; Illinois Proposed Criminal Code § 101 *et seq.*; Kentucky Proposed Penal Code § 500.101 *et seq.*

§ 22A-102 RULES OF INTERPRETATION

- (a) **GENERALLY.** To interpret a statutory provision of this title, the plain meaning of that provision shall be examined first. If necessary, the structure, purpose, and history of the provision also may be examined.
- (b) **RULE OF LENITY.** If two or more reasonable interpretations of a statutory provision remain after examination of that provision’s plain meaning, structure, purpose, and history, then the interpretation that is most favorable to the defendant applies.
- (c) **EFFECT OF HEADINGS AND CAPTIONS.** Headings and captions that appear at the beginning of chapters, subchapters, sections, and subsections of this title, may aid the interpretation of statutory language.

COMMENTARY

1. § 22A-102 (a) — Generally.

Explanatory Note. This subsection codifies the general rules of statutory interpretation that should be used to determine the meaning of provisions in the Revised Criminal Code. The subsection specifies that a provision first shall be interpreted according to the plain meaning of its text. However, in addition to its plain meaning, a provision also may be interpreted based on its structure, purpose, and history when necessary to determine the legislative intent. This subsection is intended to codify existing District law concerning the general rules of interpretation applicable to criminal statutes. Such codification provides notice to the public as to applicable rules of construction.

Relation to Current District Law. The D.C. Code currently provides no notice of how criminal statutes are to be interpreted. This subsection codifies the general rules of interpretation in District case law.

Longstanding Supreme Court and District case law holds that the first, mandatory step in statutory interpretation is always examination of the text.⁸ This examination of the text should use the ordinary, common sense meaning of words.⁹ This requirement has been called the “plain meaning” rule of interpretation, and the rule’s primacy stems from the fact that the statutory text is generally the best way to ascertain the legislative intent for a law.¹⁰ The plain meaning rule

⁸ *Tippett v. Daly*, 10 A.3d 1123, 1126 (D.C. 2010) (en banc) (“We start, as we must, with the language of the statute”) (quoting *Bailey v. United States*, 516 U.S. 137, 144 (1995)).

⁹ *Tippett*, 10 A.3d at 1126 (“Moreover, in examining the statutory language, it is axiomatic that ‘the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them.’”) (quoting *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc) (internal citations omitted)).

¹⁰ *Peoples Drug Stores*, 470 A.2d at 753 (“The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used.”). *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 64 (D.C.1980) (en banc) (quoting *United States v. Goldenberg*, 168 U.S. 95, 102-03 (1897)).

also reflects the importance of the public being able to understand and comply with criminal laws.¹¹

However, as recognized in the second sentence of subsection (a), the plain meaning rule is not necessarily the last or decisive step in interpreting a statutory provision.¹² In some situations, examination of the purpose,¹³ structure,¹⁴ or history¹⁵ of the provision and surrounding statutory text also is necessary. There does not appear to be consensus in District case law about when it is necessary to look beyond the plain meaning of a statutory provision.¹⁶ However, there is agreement that looking beyond the plain meaning of a statutory provision to the purpose, structure or history is “unusual”,¹⁷ and requires “persuasive reasons” for doing so.¹⁸ To the extent there may be ambiguity in District case law as to when the exceptions to the plain meaning rule should be applied, this subsection is intended merely to codify existing law, not resolve these ambiguities.

Relation to National Legal Trends. Most states, particularly those that have undergone comprehensive criminal code reforms, codify rules concerning the interpretation of criminal statutes.¹⁹ The content of states’ codified rules of interpretation varies considerably, but usually

¹¹ *Peoples Drug Stores*, 470 A.2d at 755 (“There are strong policy reasons for maintaining the certainty, fairness, and respect for the legal system that the plain meaning rule engenders in most instances. Unless the meaning of statutes can be readily ascertained by a reading of statutory language, the ability of citizens to comply with statutory standards is diminished and the administration of such standards may be unmanageable or even erratic.”).

¹² *Id.* at 754 (“Although the ‘plain meaning’ rule is certainly the first step in statutory interpretation, it is not always the last or the most illuminating step. This court has found it appropriate to look beyond the plain meaning of statutory language in several different situations.”)

¹³ *See, e.g., Tippet*, 10 A.3d at 1127 (“We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme.”) (quoting *Bailey v. United States*, 516 U.S. 137, 145 (1995)).

¹⁴ *See, e.g., Tippet*, 10 A.3d at 1127 (“Therefore, ‘we do not read statutory words in isolation; the language of surrounding and related paragraphs may be instrumental to understanding them.’”) (quoting *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 652 (D.C.2005) (en banc)).

¹⁵ *See, e.g., Peoples Drug Stores*, 470 A.2d at 755 (“Finally, a court may refuse to adhere strictly to the plain wording of a statute in order ‘to effectuate the legislative purpose.’”) (internal citations omitted).

¹⁶ Some judicial opinions suggest that unless absurd, it is never necessary to inquire further if the plain meaning of a provision is clear. *See, e.g., Eaglin v. District of Columbia*, 123 A.3d 953, 955 (D.C. 2013) (“[I]f the plain meaning of statutory language is clear and unambiguous and will not produce an absurd result, we will look no further.” *Smith v. United States*, 68 A.3d 729, 735 (D.C.2013) (quoting *Hood v. United States*, 28 A.3d 553, 559 (D.C.2011)); *In re Al-Baseer*, 19 A.3d 341, 344 (D.C. 2011) (“The court’s task in interpreting a statute begins with its language, and, where it is clear, and its import not patently wrong or absurd, our task comes to an end”) (quoting *In re Orshansky*, 952 A.2d 199, 210 (D.C. 2008) (internal citations omitted)). Other opinions specifically note that the clarity of a plain meaning interpretation may be misleading and further examination is required. *See, e.g., Peoples Drug Stores*, 470 A.2d at 754 (“[E]ven where the words of a statute have a ‘superficial clarity,’ a review of the legislative history or an in-depth consideration of alternative constructions that could be ascribed to statutory language may reveal ambiguities that the court must resolve.”) (quoting *Sanker v. United States*, 374 A.2d 304, 307 (D.C. 1977) (internal citations omitted)).

¹⁷ *District of Columbia v. Place*, 892 A.2d 1108, 1111 (D.C. 2006).

¹⁸ *Peoples Drug Stores*, 470 A.2d at 755.

¹⁹ Ala. Code § 13A-1-6; Alaska Stat. § 01.10.040(a); Ariz. Rev. Stat. Ann. § 13-104; Cal. Penal Code § 7(16); Colo. Rev. Stat. Ann. § 18-1-102; Conn. Gen. Stat. tit. 1, § 1-1(a); Del. Code Ann. tit. 11, § 203; Fla. Stat. Ann. § 775.021; Ga. Code Ann. § 1-3-1(b); Haw. Rev. Stat. Ann. § 701-104; Idaho Code § 73-102(1); Ky. Rev. Stat. Ann. § 500.030; La. Rev. Stat. Ann. § 1:3; Me. Rev. Stat. Ann. tit. 1, § 72(3); Mass. Gen. Laws Ann. ch. 4, § 6; Mich. Comp. Laws § 750.2; Minn. Stat. Ann. § 609.01; Miss. Code Ann. § 1-3-65; Mont. Code Ann. § 45-1-102; Neb. Rev. Stat. § 28-102; N.D. Cent. Code § 1-02-01; N.H. Rev. Stat. Ann. § 625:3; N.J. Stat. Ann. § 2C:1-2; N.Y. Penal Law § 5.00; Ohio Rev. Code Ann. § 2901.04; Okl. Stat. Ann. tit. 25, § 1; Or. Rev. Stat. Ann. § 161.025; 18 Pa. Stat. and Cons.

combine a broad rule (or rules) of interpretation with a rejection of the historic practice²⁰ of strictly construing criminal statutes. Many states' rules of interpretation explicitly reject strict construction,²¹ and a few require liberal construction.²² Also, several states direct that their statutes be interpreted according to their "common" or "ordinary" meaning, de facto abolishing strict construction.²³ Further, some states follow the approach of the Model Penal Code by requiring interpretations to follow statutorily-specified general purposes of the criminal code which do not refer to strict construction.²⁴ Even among states that do not otherwise follow the Model Penal Code's reference to general purposes, many states closely follow its language requiring interpretation of statutes "according to the fair import of their terms."²⁵

The Revised Criminal Code differs from most jurisdictions by providing greater detail and clarity as to the appropriate rules of interpretation. Subsection (a) identifies the four bases for statutory interpretation generally recognized by current District law. The subsection does not use the Model Penal Code's more ambiguous language requiring interpretation of statutes "according to the fair import of their terms" and does not give special weight to the general and special purposes of a given statute. However, like many other jurisdictions, subsection (a) rejects the practice of strictly construing criminal statutes insofar as it specifies that the "plain meaning" of the text is to be used in interpretation.²⁶

Stat. Ann. § 105; S.D. Codified Laws § 22-1-1; Tenn. Code Ann. § 39-11-104; Tex. Penal Code Ann. § 1.05; Utah Code Ann. § 76-1-104.; Wis. Stat. Ann. § 990.01(1); Wyo. Stat. Ann. § 8-1-103(a)(i). See Zachary Price, *The Rule of Lenity As A Rule of Structure*, 72 *FORDHAM L. REV.* 885, 902 (2004) (collecting statutes).

²⁰ See John Calvin Jeffries, Jr., *Legality, Vagueness, and the Construction of Penal Statutes*, 71 *VA. L. REV.* 189, 198-199 (1985). But see Fla. Stat. Ann. § 775.021; Ohio Rev. Code Ann. § 2901.04(a) (codifying that criminal statutes should be strictly construed in favor of defendants).

²¹ See Paul H. Robinson, *Fair Notice and Fair Adjudication: Two Kinds of Legality*, 154 *U. PENN. L. REV.* 335, 347 (2005); see also, Ariz. Rev. Stat. Ann. § 13-104; Del. Code Ann. tit. 11, § 203; Idaho Code § 73-102(1); Mich. Comp. Laws § 750.2 ; Mont. Code Ann. § 45-1-102(2); N.H. Rev. Stat. Ann. § 625:3; N.D. Cent. Code § 1-02-01 ; Or. Rev. Stat. § 161.025(2); S.D. Codified Laws § 22-1-1; Tex. Penal Code Ann. § 1.05 ; Utah Code Ann. § 76-1-106.

²² Ky. Rev. Stat. Ann. § 500.030; see also Idaho Code § 73-102(1); N.D. Cent. Code § 1-02-01.

²³ Ala. Code § 13A-1-6; Alaska Stat. § 01.10.040(a); Cal. Penal Code § 7(16); Conn. Gen. Stat. tit. 1, § 1-1(a); Ga. Code Ann. § 1-3-1(b); Haw. Rev. Stat. § 1-14; La. Rev. Stat. Ann. § 1:3; Me. Rev. Stat. Ann. tit. 1, § 72(3); Mass. Gen. Laws Ann. ch. 4, § 6; Minn. Stat. § 645.08(1); Miss. Code Ann. § 1-3-65; Neb. Rev. Stat. § 28-102; Okl. Stat. Ann. tit. 25, § 1; Tenn. Code Ann. § 39-11-104; Wis. Stat. Ann. § 990.01(1); Wyo. Stat. Ann. § 8-1-103(a)(i).

²⁴ Ala. Code § 13A-1-6; Ariz. Rev. Stat. Ann. § 13-104; Colo. Rev. Stat. § 18-1-102; Del. Code Ann. tit. 11, § 203 720 Ill. Comp. Stat. Ann. 5/1-2 ; N.J. Stat. Ann. § 2C:1-2(a); 18 Pa. Cons. Stat. Ann. § 105; Wash. Rev. Code Ann. § 9A.04.020(2). See also Model Penal Code § 1.02 cmt. at 33 n.78 (cataloguing state codes based upon the MPC formulation of rule of fair import).

²⁵ Model Penal Code § 1.02(3) "The provisions of the Code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved."

²⁶ At least one DCCA opinion states that the District's rule of lenity provides for strict construction of criminal statutes. *Lemon v. United States*, 564 A.2d 1368, 1381 (D.C.1989) ("On the other side of the scale, we must of course consider the rule of lenity, which provides that criminal statutes should be strictly construed and that genuine ambiguities should be resolved in favor of the defendant."). However, as discussed below, the rule of lenity is a second order rule of interpretation in the District that only applies if there is a failure to resolve the meaning based on the plain meaning and other methods of interpretation in subsection (a).

2. § 22A-102 (c) — Rule of Lenity

Explanatory Note. Subsection (b) codifies how to interpret statutory language when the rules of statutory interpretation in subsection (a) fail to resolve the matter. Subsection (b) states that if multiple, reasonable interpretations of statutory language remain viable after examination of the statute’s plain meaning, structure, purpose, and history, then the interpretation that is most favorable to the defendant applies. This codifies existing District case law concerning the rule of lenity.

Relation to Current District Law. The DCCA has held that the rule of lenity is “a secondary canon of construction” that is to be applied after other rules of interpretation, and only if necessary.²⁷ In other words, the rule of lenity is a rule of last resort.²⁸ The rule can “tip the balance in favor of criminal defendants only where, exclusive of the rule, a penal statute’s language, structure, purpose and legislative history leave its meaning genuinely in doubt.”²⁹ Moreover, the interpretation favoring the defendant must still be a “reasonable” interpretation of a statute’s language, structure, purpose and history.³⁰ The rule of lenity reflects a policy decision that imprisonment should not be imposed except where the legislative intent is clear.³¹

Relation to National Legal Trends. Nearly every state has recognized the rule of lenity in some form in its case law.³² However, none have specifically codified a rule of lenity.³³ The Model Penal Code also does not codify the rule of lenity per se; instead, it states that conflicting interpretations are to be resolved with reference to the general purposes of the Code.³⁴ Other proposed code reforms have also stated that statutes should be interpreted with reference to the general purposes of the code, but do not codify the rule of lenity.³⁵ The Revised Criminal Code, by contrast, codifies the rule of lenity and clarifies its distinctive role as a secondary canon of construction when other interpretive rules fail.

3. § 22A-102 (c) — Effect of Headings and Captions

Explanatory Note. This subsection states that the headings and captions throughout Title 22A may be used to aid interpretation of statutory provisions.

Relation to Current District Law. Criminal statutes in the District historically have not been in enacted titles of the D.C. Code. To the extent the Official D.C. Code now contains

²⁷ *Luck v. District of Columbia*, 617 A.2d 509, 515 (D.C. 1992).

²⁸ *See, e.g., Luck*, 617 A.2d at 515 (quoting *Callanan v. United States*, 364 U.S. 587, 596 (1961)); *Heard v. United States*, 686 A.2d 1026, 1029 (D.C. 1996) (citing *Moskal v. United States*, 498 U.S. 103, 108 (1990)).

²⁹ *Lemon v. United States*, 564 A.2d 1368, 1381 (D.C.1989) (quoting *United States v. Otherson*, 637 F.2d 1276, 1285 (9th Cir.1980)).

³⁰ *Henson v. United States*, 399 A.2d 16, 21 (D.C.1979).

³¹ *Luck*, 617 A.2d at 515 (“This policy embodies the instinctive distaste against men [and women] languishing in prison unless the lawmaker has clearly said they should.”) (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971)).

³² Price, *supra* note 19, at 885, 901 n.109.

³³ However, as noted above, two states have codified rules of interpretation strictly construing criminal statutes in favor of defendants. Fla. Stat. Ann. § 775.021; Ohio Rev. Code Ann. § 2901.04(a).

³⁴ Model Penal Code § 1.02(3).

³⁵ Illinois Reform Project § 102; Brown Commission § 102.

headings and captions for criminal offenses, these are typically notations added by codification counsel or code publication experts. There appears to be no case law in the District assessing the significance of headings and captions for interpreting criminal statutes.

Relation to National Legal Trends. A handful of states have provisions in their criminal codes that describe the relevance of headings and captions.³⁶ Additionally, two recent code reform efforts have adopted a similar provision.³⁷

§ 22A-103 INTERACTION OF TITLE 22A WITH OTHER DISTRICT LAWS

- (a) GENERAL INTERACTION OF TITLE 22A WITH PROVISIONS IN OTHER LAWS. Unless otherwise provided by law, a provision in this title applies to this title alone.
- (b) INTERACTION OF TITLE 22A WITH CIVIL PROVISIONS IN OTHER LAWS. The provisions of this title do not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action.

COMMENTARY

Explanatory Note. This section limits the scope of Title 22A provisions to avoid unintended consequences that otherwise might arise from applying the title’s provisions to other laws. Subsection (a) provides that the provisions of Title 22A will not apply to any law outside of Title 22A unless a law specifies otherwise. For instance, crimes in Title 22 and other titles of the D.C. Code will not be affected by the general provisions of Title 22A unless a law specifically states that the general provisions so apply. Subsection (b) provides that Title 22A will not have any unintended effect on current civil law. For example, the conviction or acquittal of a defendant for a crime will not affect subsequent civil litigation arising from the same incident, unless otherwise specified by law.

Relation to Current District Law. None.

Relation to National Legal Trends. Other jurisdictions that have undertaken comprehensive criminal code reform have included similar language in their statutes.³⁸ For example, Kansas provides that the criminal code “does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which this code makes punishable. The civil injury caused by criminal conduct is not merged in the crime.”³⁹ The Revised Criminal Code’s language is substantially similar to Kansas and other jurisdictions’ language.

³⁶ 720 Ill. Comp. Stat. Ann. 5/34-1; N.J. Stat. Ann. § 2C:1-1; Wash. Rev. Code Ann. § 9A.04.010.

³⁷ Illinois Reform Project § 102(3); Delaware Reform Project § 102(b).

³⁸ Ala. Code § 13A-1-8; Ariz. Rev. Stat. Ann. § 13-102; Colo. Rev. Stat. Ann. § 18-1-103; 720 Ill. Comp. Stat. Ann. 5/1-4; Kan. Stat. Ann. § 21-5105; Me. Rev. Stat. tit. 17-A, § 3; N.Y. Penal Law § 5.10; Or. Rev. Stat. Ann. § 161.045; 18 Pa. Stat. and Cons. Stat. Ann. § 107; S.D. Codified Laws § 22-2-1; Tenn. Code Ann. § 39-11-102; Tex. Penal Code Ann. § 1.03; Va. Code Ann. § 18.2-7; Wyo. Stat. Ann. § 6-1-103.

³⁹ Kan. Stat. Ann. § 21-5105.

§ 22A-104 APPLICABILITY OF THE GENERAL PART

Unless otherwise provided by law, provisions in subtitle I of Title 22A apply to all other provisions of Title 22A.

COMMENTARY

Explanatory Note. This section clarifies that provisions in the General Part, subtitle I of the Revised Criminal Code, by default apply to all the statutes contained within Title 22A. For example, the definition of the term “recklessly” in Section 22A-205 applies to all instances of the word within Title 22A, including other general provisions. However, any statute within Title 22A may contain a provision stating that one or more provisions in the General Part do not apply to that statute, overriding the default applicability of the General Part provisions. For instance, the Revised Criminal Code’s burglary offense could make the Section 22A-205 definition of “recklessly” not applicable if the burglary offense states as much. This section clarifies and fills gaps in current District law regarding the applicability of general provisions.

Relation to Current District Law. The D.C. Code (including Title 22⁴⁰) contains some provisions that are generally applicable.⁴¹ However, these statutes either themselves provide for possible exceptions⁴² or are stated as universally applicable. The D.C. Code does not appear to have codified a broad limitation on the applicability of general provisions. District case law, however, has filled this gap. The DCCA has long recognized “the well-settled rule of statutory construction that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms.”⁴³

Relation to National Legal Trends. The general rule of statutory construction that the “[s]pecific terms prevail over the general in the same or another statute which otherwise might be controlling”⁴⁴ appears to be accepted in every jurisdiction. This provision is common to reformed criminal codes in other jurisdictions,⁴⁵ and one recent code reform proposal has included language to the proposed text above, as well.⁴⁶

⁴⁰ See, e.g., D.C. Code § 22-1801 (“Writing” and “paper” defined) and D.C. Code § 22-1802 (“Anything of value” defined). Other provisions in Chapter 18 of Title 22, labeled “General offenses” by Codification Counsel, also apply generally to Title 22 offenses, as do certain penalty provisions in Chapters 35 and 36.

⁴¹ See, e.g., D.C. Code §§ 45-601- 606 (Rules of Construction).

⁴² See, e.g., D.C. Code § 22-1801 (“Except where otherwise provided for where such a construction would be unreasonable, the words “writing” and “paper,” wherever mentioned in this title, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing.”) (emphasis added).

⁴³ *Martin v. United States*, 283 A.2d 448 (D.C. 1971).

⁴⁴ *Kepner v. United States*, 195 U. S. 100, 125 (1904).

⁴⁵ Ala. Code § 13A-1-7; Ariz. Rev. Stat. Ann. § 13-102; Conn. Gen. Stat. Ann. § 53a-2; Del. Code Ann. tit. 11, § 103; Haw. Rev. Stat. Ann. § 701-102; Kan. Stat. Ann. § 21-5103; Minn. Stat. Ann. § 609.015; Mo. Ann. Stat. § 556.031; N.H. Rev. Stat. Ann. § 625:7; N.J. Stat. Ann. § 2C:1-5; N.Y. Penal Law § 5.05; Or. Rev. Stat. Ann. § 161.035; 18 Pa. Stat. and Cons. Stat. Ann. § 107; Tex. Penal Code Ann. § 1.05; Utah Code Ann. § 76-1-103; Wash. Rev. Code Ann. § 9A.04.090; Wis. Stat. Ann. § 939.20.

⁴⁶ Illinois Proposed Criminal Code § 103(2);