



# First Draft of Report #46 – Possession of an Open Container of Alcohol

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

This Draft Report has two parts: (1) draft statutory text for a new Title 22E of the D.C. Code; and (2) commentary on the draft statutory text. The commentary explains the meaning of each provision and considers whether existing District law would be changed by the provision (and if so, why this change is being recommended).

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 #46 – Possession of an Open Container of Alcohol is Wednesday, January 15, 2020. Oral comments and written comments received after this date may not be reflected in the next draft or final recommendations. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

**RCC § 25-1001. Possession of an Open Container or Consumption of Alcohol in a Motor Vehicle.**

- (a) *Offense.* A person commits possession of an open container or consumption of alcohol in a motor vehicle when that person:
  - (1) Knowingly:
    - (A) Consumes an alcoholic beverage; or
    - (B) Possesses an alcoholic beverage in an open container;
  - (2) In the passenger area of a motor vehicle on a public highway, or the right-of-way of a public highway.
- (b) *Exclusions from Liability.*
  - (1) A person shall not be subject to prosecution under this section for conduct in a vehicle that operates on rails.
  - (2) A person shall not be subject to prosecution under this section if that person is:
    - (A) Located in:
      - (i) The passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or
      - (ii) The living quarters of a house coach or house trailer; and
    - (B) Not operating the motor vehicle.
- (c) *No Attempt Possession of an Open Container or Consumption of Alcohol Offense.* It is not an offense to attempt to commit the offense described in this section.
- (d) *Penalty.* Possession of an open container of alcohol in a motor vehicle is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (e) *Definitions.* The term “knowingly” has the meaning specified in RCC § 22E-206; the terms “motor vehicle” and “possess” have the meanings specified in RCC § 22E-701; the terms “alcoholic beverage” and “open container” have the meanings specified in D.C. Code § 25-101; and the term “highway” has the meaning specified in 23 U.S.C. § 101(a).
- (f) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense.

**COMMENTARY**

***Explanatory Note.*** This section establishes the possession of an open container or consumption of alcohol in a motor vehicle offense and penalty for the Revised Criminal Code (RCC). The revised statute replaces D.C. Code § 25-1001 (*Drinking of alcoholic beverage in public place prohibited; intoxication prohibited*).

Paragraph (a)(1) specifies that a person must act at least knowingly. “Knowingly” is a defined term<sup>1</sup> and applied here means that the person must be practically certain that they are consuming or possessing an alcoholic beverage. The term “alcoholic beverage” is defined<sup>2</sup> and

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<sup>1</sup> “Knowingly” is defined in RCC § 22E-206.

<sup>2</sup> RCC § 22E-701.

means a liquid or solid containing alcohol capable of being consumed by a human being. It does not include a liquid or solid containing less than one-half of 1% of alcohol by volume.<sup>3</sup>

Subparagraph (a)(2)(A) specifies that the first way of committing the offense is by consuming an alcoholic beverage. Per the rules of interpretation in RCC § 22E-207, a person must know—that is be practically certain—they are consuming an alcoholic beverage.<sup>4</sup>

Subparagraph (a)(2)(B) specifies that the second way of committing the offense is by possessing an alcoholic beverage in an open container.<sup>5</sup> “Possesses” is a defined term and includes both actual and constructive possession.<sup>6</sup> Constructive possession requires intent to exercise dominion and control over an object and to guide its destiny.<sup>7</sup> The term “open container” is defined and means “a bottle, can, or other container that is open or from which the top, cap, cork, seal, or tab seal has at some time been removed.”<sup>8</sup> Per the rules of interpretation in RCC § 22E-207, a person must know—that is be practically certain—that the container contains an alcoholic beverage<sup>9</sup> and that the container is unsealed.<sup>10</sup>

Paragraph (a)(2) specifies that the possession or consumption of alcohol must occur in the passenger area of a motor vehicle on a public highway, or the right-of-way of a public highway. The term “passenger area” is undefined but is intended to have a meaning that is consistent with federal regulations.<sup>11</sup> The term “motor vehicle” is defined in RCC § 22E-701 and the term “highway” is defined in 23 U.S.C. § 101(a). Per the rules of interpretation in RCC § 22E-207, a person must know—that is be practically certain—that the beverage is in the passenger area of the vehicle and that they are in the prohibited location.

Subsection (b) establishes two exclusions from liability for the possession of an open container or consumption of alcohol in a motor vehicle offense. Paragraph (b)(1) excludes liability for consumption or possession of alcohol in a vehicle that operates on rails, such as a streetcar or Metrorail car.<sup>12</sup> Paragraph (b)(2) excludes liability for passengers in motor vehicles designed for commercial transportation of many passengers, such as a limousine, or a recreational vehicle.<sup>13</sup> This exclusion does not apply to passengers in other vehicles or to drivers.

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<sup>3</sup> RCC § 22E-701; D.C. Code § 25-101(5); *Reid v. District of Columbia*, 980 A.2d 1131, 1133 (2009).

<sup>4</sup> For example, if a passenger surreptitiously spikes a driver’s drink, the unknowing driver does not commit an offense.

<sup>5</sup> Possessing one or more open beverages on a single occasion constitutes a single offense.

<sup>6</sup> RCC § 22E-701.

<sup>7</sup> *Guishard v. United States*, 669 A.2d 1306, 1312 (D.C. 1995).

<sup>8</sup> D.C. Code § 25-101(35); *see also Bean v. United States*, 17 A.3d 635, 637 (D.C. 2011) (holding the definition is not unconstitutionally vague); *but see* D.C. Code § 25-113(b)(5) (permitting a licensed restaurant to reseal one bottle of wine per patron in a manner that it is visibly apparent if the container has been subsequently opened).

<sup>9</sup> There must be evidence that the alcohol bottle contains some liquid. *See Workman v. United States*, 96 A.3d 678, 681-82 (2014).

<sup>10</sup> *See Robinson v. Gov’t of the Dist. of Columbia*, 234 F. Supp. 3d 14, 26 (D.D.C. 2017).

<sup>11</sup> *See* 23 U.S.C. § 154(a)(4). Under the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), “Passenger area” is currently defined as the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Vehicles without trunks may have an open alcoholic beverage container behind the last upright seat or in an area not normally occupied by the driver or passengers. A law that permits the possession of open alcoholic beverage containers in an unlocked glove compartment, however, will not conform to the requirements. An unlocked glove compartment is within the scope of the revised statute.

<sup>12</sup> *See* 23 U.S.C. § 154(a)(2).

<sup>13</sup> *See* 23 U.S.C. § 154(b)(2).

Subsection (c) specifies that attempted possession of an open container or consumption of alcohol in a motor vehicle is not an offense.

Subsection (d) provides the penalty for the revised offense. [RESERVED.]

Subsection (e) cross-references applicable definitions in the RCC, the D.C. Code, and the United States Code.

Subsection (f) specifies that Chapters 1 – 6 the RCC’s General Part apply to this Title 7 offense.

***Relation to Current District Law.*** *The revised possession of an open container or consumption of alcohol in a motor vehicle offense changes current District law in four main ways.*

First, the revised statute does not criminalize possession of an open container outside of a motor vehicle. Current D.C. Code § 25-1001(4) makes it unlawful to possess an open container of alcohol in “[a]ny place to which the public is invited and for which a license to sell alcoholic beverages has not been issued...” The current statute provides exceptions for private residences and special events.<sup>14</sup> In *Robinson v. Gov’t of the Dist. of Columbia*,<sup>15</sup> the court explained that the statute furthers a legitimate interest in proscribing public consumption of alcohol and public intoxication. However, the scope of the statutory language is not limited to possessing an open container with intent to consume its contents in public or with intent to become intoxicated in public. Rather, the language more broadly criminalizes any possession of an open container, including some conduct not commonly considered criminal.<sup>16</sup> In contrast, the revised statute offense is limited to motor vehicles, where the danger of intoxication is so grave that mere access to alcohol warrants criminal punishment. Civil penalties may be warranted for individuals who possess an open container of alcohol in other locations.<sup>17</sup> Businesses that provide alcohol in open containers to a customer risk losing their license to sell or serve alcohol.<sup>18</sup> This change improves the proportionality<sup>19</sup> of the revised offenses.

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<sup>14</sup> D.C. Code § 25-1001(b).

<sup>15</sup> 234 F. Supp. 3d 14, 26 (D.D.C. 2017).

<sup>16</sup> For example, carrying a bag full of half empty beers to a recycling bin in an alleyway or carrying a bottle of homemade sangria to a gathering at a friend’s home. In contrast, the District does not arrest for public smoking of marijuana. See Martin Weil and Clarence Williams, *D.C. arrests for marijuana use to result in citation, not custody, officials say*, WASHINGTON POST (September 21, 2018).

<sup>17</sup> In contrast to cities that have fully legalized public drinking (e.g., Las Vegas, NV; New Orleans, LA; Sonoma, CA; Fort Worth, TX; Savannah, GA; Indianapolis, IN; Erie, PA; Butte, MT; Hood River, OR; Gulfport, MS), the revised code decriminalizes public possession of an open container of alcohol and intoxication without making any recommendation as to whether and what civil remedies should be promulgated and enforced.

<sup>18</sup> D.C. Code § 25-741.

<sup>19</sup> Drinking in a public place is a public order crime that carries significant collateral consequences and may disproportionately impact persons of color. An arrest for POCA, similar to the effects of possession of marijuana, may lead to discrimination in employment, housing, and education. See Report on Bill 20-409, the “Marijuana Possession Decriminalization Amendment Act of 2014,” Council of the District of Columbia Committee on the Judiciary and Public Safety (January 15, 2014) at Page 5. It also may divert police resources away from investigating serious crime. *Id.* at Page 7. The direct and collateral consequences disproportionately impact low-income people and people of color. *Racial Disparities in D.C. Policing: Descriptive Evidence From 2013-2017*, American Civil Liberties Union of the District of Columbia (May 13, 2019) (“Because people in poverty are less likely to own property than wealthier individuals, they have fewer private places to congregate with friends. That makes members of low-income communities more likely to gather in public—and commit open container violations if they drink alcohol while doing so.”); see also Joseph Goldstein, *Sniff Test Does Not Prove Public Drinking, a*

Second, the revised code does not criminalize public intoxication.<sup>20</sup> Current D.C. Code § 25-1001(c) provides: “No person, whether in or on public or private property, shall be intoxicated and endanger the safety of himself, herself, or any other person or property.” The term “intoxicated” is undefined in the current statute and District case law has not interpreted its meaning.<sup>21</sup> District case law has held that chronic alcoholism is a defense to public intoxication,<sup>22</sup> but has not defined the meaning of the phrase “chronic alcoholic.” In contrast, the revised statute eliminates criminal liability for any form of public intoxication, whether or not a person is a “chronic alcoholic.” The District has long recognized the need of addressing public health issues through means other than criminalization.<sup>23</sup> Separate from D.C. Code § 25-1001(c), D.C. Code § 24-604 already provides that any person who is intoxicated in public may be (1) taken or sent to his home or to a public or private health facility; or (2) taken to a detoxification center.<sup>24</sup> Moreover, under D.C. Code § 25-781, a business that sells to an intoxicated person or a person who appears to be intoxicated, risks losing its license to sell or serve alcohol. This change improves the proportionality of the revised offenses.

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*Judge Rules*, NEW YORK TIMES (June 14, 2012) (noting one study determined 85% of open-container charges were given to Black and Latino people and 4% given to White people in Brooklyn, NY). By comparison, 87% of POCA charges in D.C. Superior Court adult charges for POCA from 2009-2019 were for Black and 5% to white people. CCRC Advisory Group Memorandum #28, Statistics on District Adult Criminal Charges and Convictions, Appendix D (10-21-19).

<sup>20</sup> *But see* RCC § 22E-4201 (Disorderly Conduct), which punishes recklessly causing another person to reasonably believe that he or she is likely to suffer bodily injury, taking of property, or damage to property in a public place. The revised disorderly conduct statute does not reach conduct that occurs in private or behavior that only endangers a person’s own bodily integrity or property. *See also* 36 CFR § 2.35(c) (prohibiting presence in a federal park area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or park resources).

<sup>21</sup> Title 50, Chapter 22 of the D.C. Code, concerning impaired operating or driving defines “intoxicated” to mean a specific blood alcohol content for persons over 21 years of age and any measurable blood alcohol content for persons under 21 years of age. *See* D.C. Code Ann. § 50-2206.01.

<sup>22</sup> *Easter v. Dist. of Columbia*, 361 F.2d 50, 53-55 (D.C. Cir. 1966) (explaining, “One who is a chronic alcoholic cannot have the *mens rea* necessary to be held responsible criminally for being drunk in public...[A] chronic alcoholic is in fact a sick person who has lost control over his use of alcoholic beverages...[T]o convict such a person of that crime would also offend the Eighth Amendment.”); *see also* Anne E. Marimow, *Court Strikes Down Virginia Law ‘Criminalizing an Illness’ In Targeting Homeless Alcoholics*, THE WASHINGTON POST (July 17, 2019); *compare Robinson v. California*, 370 U.S. 660, 660 (1962) (holding that criminalizing the status of narcotics addiction as cruel and unusual punishment) *with Powell v. State of Tex.*, 392 U.S. 514 (1968) (upholding a conviction for *public* drunkenness); *Hicks v. Dist. of Columbia*, 383 U.S. 252, 252 (1966) (J. Douglas, dissenting) (stating the District’s vagrancy statute violates due process).

<sup>23</sup> *See, e.g.*, D.C. Code § 24-601 (“all public officials in the District of Columbia shall take cognizance of the fact that public intoxication shall be handled as a public health problem rather than as a criminal offense, and that a chronic alcoholic is a sick person who needs, is entitled to, and shall be provided appropriate medical, psychiatric, institutional, advisory, and rehabilitative treatment services of the highest caliber for his illness.”); Report on Bill 21-360, the “Neighborhood Engagement Achieves Results Amendment Act of 2016,” Council of the District of Columbia Committee on the Judiciary (January 28, 2016) at Page 4 (“There has been a growing consensus in recent years that violence is a public health problem that can be best prevented by identifying and addressing its root causes and by improving access to social services and supports.”). In *Easter v. Dist. of Columbia*, the D.C. Circuit cited legislative history in which the Council noted, “[A]nything more futile than this process of getting drunk, being arrested, receiving 10, 15, or 30-day sentences, going to the Jail and to the Workhouse serving time, going out and getting drunk again, can scarcely be imagined.” 361 F.2d 50, App. B (D.C. Cir. 1966) (noting “[T]he average person arrested for intoxication during that test period had a record of 12 prior arrests for the same offense...the best evidence that existing procedures are failing to rehabilitate the alcoholic.”).

<sup>24</sup> D.C. Code § 25-1001(d) includes a cross-reference to this provision.

Third, the revised statute provides specific exclusions from liability for passengers in commercial and certain other recreational and mass transit vehicles. D.C. Code § 25-1001(a)(2) prohibits possession of an open container in a “vehicle in or upon any street, alley, park, or parking area,” without exception. Under current District law, a person who commissions a limousine or an event bus faces the same penalty for possession of an open container in that vehicle as a person who drives their own vehicle while drinking. In contrast, the revised offense does not punish drinking as a passenger in a commercial, recreational, or mass transit vehicle. This change allows persons with an open container of alcohol to hire a driver potentially providing a safe alternative to driving under the influence of alcohol.<sup>25</sup> This change improves the proportionality of the revised offenses.

Fourth, the revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22E of the D.C. Code apply to this offense. The current D.C. Code generally does not codify consistent definitions, rules of liability, rules of interpretation, or general defenses. In contrast, Subtitle I of Title 22E sets forth broadly applicable rules and definitions relating to the basic requirements of criminal liability, inchoate liability, justification defenses, and penalty enhancements. Application of these general provisions to the possession of an open container or consumption of alcohol in a motor vehicle offense may change District law in numerous ways. For more in-depth discussion of these general provisions, see commentary accompanying statutory provisions in Subtitle I of Title 22E. These changes improve the clarity, completeness, and proportionality of the revised offense.

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

The revised statute applies a standardized definition for the “knowingly” culpable mental state required for possession of an open container or consumption of alcohol in a motor vehicle liability. The current statute does not specify a requisite mental state,<sup>26</sup> however, the United States District Court for the District of Columbia has construed the law to require knowledge implicitly.<sup>27</sup> Furthermore, District case law generally requires knowledge for actual or constructive possession of any item.<sup>28</sup> The revised statute uses the RCC’s general provisions that define “knowingly” and specify that culpable mental states apply until the occurrence of a new culpable mental state in the offense.<sup>29</sup> These changes clarify and improve the consistency of District statutes.

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

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<sup>25</sup> Notably, nonprofit organization Mothers Against Drunk Driving has not actively supported public consumption laws, adding “We’re concerned about [open-container laws] for vehicles.” Emile Shire, Drunk on Power: It’s Time to Ditch America’s Idiotic Open-Container Laws, THE DAILY BEAST (April 14, 2017).

<sup>26</sup> D.C. Code § 25-1001.

<sup>27</sup> *Robinson v. Gov’t of the Dist. of Columbia*, 234 F. Supp. 3d 14, 26 (D.D.C. 2017) (explaining the individual must know the container he possesses contains an alcoholic beverage, know the container is unsealed, and know he is standing in a public space while in possession of that container).

<sup>28</sup> See, e.g., *Campos v. United States*, 617 A.2d 185, 187-88 (D.C. 1992); *United States v. Joseph*, 892 F.2d 118, 125 (D.C. Cir. 1989); *Thompson v. United States*, 567 A.2d 907, 908 (D.C. 1989); *Easley v. United States*, 482 A.2d 779, 781 (D.C. 1984).

<sup>29</sup> RCC § 22E-207.

The revised code defines “possession” in its general part.<sup>30</sup> The D.C. Code does not codify a definition of possession, although it is an element of several property, drug, and weapon offenses. Instead, parties rely on District case law concerning what evidence is or is not sufficient to establish that the accused actually or constructively or jointly possessed an unlawful item.<sup>31</sup> The RCC definition of “possession,”<sup>32</sup> with the requirement in the offense that the possession be “knowing,”<sup>33</sup> matches the meaning of possession in current DCCA case law.<sup>34</sup> The RCC definition of possession improves the consistency of possessory elements throughout revised statutes.

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

First, the revised statute includes an exception for passengers of commercial and recreational vehicles. Twenty-nine states (hereafter “reform jurisdictions”) have comprehensively modernized their criminal laws based in part on the Model Penal Code.<sup>35</sup> Of these, all 29 have statutes that criminalize consumption of alcohol in a motor vehicle, consistent with 23 U.S.C. 154(b)(1),<sup>36</sup> and all but three include an exception for motor vehicles designed to transport many passengers, consistent with 23 U.S.C. 154(b)(2).<sup>37</sup>

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<sup>30</sup> RCC § 22E-202.

<sup>31</sup> See Criminal Jury Instructions for the District of Columbia Instruction 3.104 (2018).

<sup>32</sup> RCC § 22E-701.

<sup>33</sup> RCC § 22E-206.

<sup>34</sup> See *United States v. Hubbard*, 429 A.2d 1334, 1338 (D.C. 1981) (“Actual possession has been defined as the ability of a person to knowingly exercise direct physical custody or control over the property in question. See *United States v. Spears*, 145 U.S.App.D.C. 284, 293, 449 F.2d 946, 955 (1971); *Spencer v. United States*, 73 U.S.App.D.C. 98, 99, 116 F.2d 801, 802 (1940).”); see also *Rivas v. United States*, 783 A.2d 125, 128 (D.C. 2001) (en banc) (“[I]n...constructive possession cases, there must be something more in the totality of the circumstances—a word or deed, a relationship or other probative factor—that, considered in conjunction with the evidence of proximity and knowledge, proves beyond a reasonable doubt that the passenger *intended* to exercise dominion or control over the drugs, and was not a mere bystander.” (Emphasis in original.)); *Guishard v. United States*, 669 A.2d 1306, 1312 (D.C. 1995) (“To obtain a conviction based on a theory of constructive possession, the government must prove that the defendant knew of the location of the contraband, that he had the ability to exercise dominion and control over it, and that he ‘intended to guide [its] destiny.’ *Speight v. United States*, 599 A.2d 794, 796 (D.C.1991); *In re T.M.*, 577 A.2d 1149, 1151–1152 n. 5 (D.C.1990); *Bernard v. United States*, 575 A.2d 1191, 1195-1196 (D.C.1990).”).

<sup>35</sup> 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) (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.

<sup>36</sup> See Heather Morton, “Open Container and Consumption Statutes,” National Conference of State Legislatures, May 13, 2013 (available at <http://www.ncsl.org/research/financial-services-and-commerce/open-container-and-consumption-statutes.aspx>); Ala. Code § 32-5A-330(b); Alaska Stat. § 28.35.029(a); Ariz. Rev. Stat. Ann. § 4-251(A); Ark. Stat. Ann. § 5-71-212(c)(2); Colo. Rev. Stat. § 42-4-1305(2)(a); Conn. Gen. Stat. § 53a-213; Del. Code Ann. tit. 21, § 4177J; Hawaii Rev. Stat. § 291-3.2; Ill. Rev. Stat. ch. 625, § 5/11-502(a)-(b); Ind. Code § 9-30-15-4; Kan. Stat. Ann. § 8-1599; Ky. Rev. Stat. § 189.530; Me. Rev. Stat. Ann. tit. 29-A, § 2112-A(2); Minn. Stat. § 169A.35(Subd. 2); Mo. Rev. Stat. § 577.017; Mont. Code Ann. § 61-8-460(1); N.H. Rev. Stat. Ann. § 265-A:44; N.J. Rev. Stat. § 39:4-51a; N.Y. Vehicle & Traffic Law § 1227; N.D. Cent. Code § 39-08-18; Ohio Rev. Code Ann. §§ 4301.62, 4301.64; Or. Rev. Stat. § 811.170; Pa. Cons. Stat. tit. 75, § 3809(a); S.D. Codified Laws Ann. § 35-1-



Second, the revised statute does not criminalize possession of an open container of alcohol outside of a motor vehicle or public intoxication. Only 11 of the 29 reform jurisdictions appear to criminalize possession of an open container of alcohol in public.<sup>38</sup> One of these statutes applies only to schools, churches, and courts,<sup>39</sup> and another applies only to buildings, parks, and stadiums.<sup>40</sup> At the municipal level, at least two other large cities have recently reexamined the criminalization of “quality-of-life” infractions. For example, in 2016, the New York City Council passed legislation that imposes a presumption of a civil summons only for eight minor offenses, including possession of an open container of alcohol (in a motor vehicle).<sup>41</sup> In the same year, San Francisco discarded 66,000 arrest warrants for petty offenses including public drunkenness, reasoning that jailing is a disproportionate remedy.<sup>42</sup> Several states forbid municipalities from criminalizing public drinking or public intoxication.<sup>43</sup> A 2013 national poll indicates few American adults support criminal charges being brought against people who drink in public.<sup>44</sup> A 2019 poll of District voters found that 48.5% rated possessing an open container of alcohol in a public place most similar to a non-crime such as a speeding ticket.<sup>45</sup>

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9.1; Tenn. Code Ann. § 55-10-416; Tex. Penal Code Ann. § 49.031(b); Utah Code Ann. § 41-6a-526; Wash. Rev. Code § 46.61.519; Wis. Stat. § 346.935.

<sup>37</sup> Some statutes exclude all passengers and other statutes exclude passengers in commercial or recreational vehicles. Ala. Code § 32-5A-330(c); Alaska Stat. § 28.35.029(b)(3)-(4); Ariz. Rev. Stat. Ann. § 4-251(C); Colo. Rev. Stat. § 42-4-1305(2)(b); Conn. Gen. Stat. § 53a-213; Del. Code Ann. tit. 21, § 4177J; Hawaii Rev. Stat. § 291-3.4; Ill. Rev. Stat. ch. 625, §5/11-502(c); Ind. Code § 9-30-15-1; Kan. Stat. Ann. § 8-1599(b)(3); Ky. Rev. Stat. §189.530; Me. Rev. Stat. Ann. tit. 29-A, § 2112-A(3); Minn. Stat. § 169A.35(Subd. 6); Mont. Code Ann. § 61-8-460(2); N.H. Rev. Stat. Ann. § 265-A:44(V); N.J. Rev. Stat. § 39:4-51b(a); N.Y. Vehicle & Traffic Law § 1227; N.D. Cent. Code § 39-08-18; Ohio Rev. Code Ann. § 4301.62(D); Or. Rev. Stat. § 811.170; Pa. Cons. Stat. tit. 75, § 3809(b); Tenn. Code Ann. § 55-10-416; Tex. Penal Code Ann. § 49.031(c); Utah Code Ann. § 41-6a-526(4)-(5); Wash. Rev. Code § 46.61.519(4); Wis. Stat. § 346.935(4)(b).

<sup>38</sup> Ariz. Rev. Stat. Ann. § 4-244; Ark. Stat. Ann. § 5-71-212; Kan. Stat. Ann. § 41-719; Ky. Rev. Stat. § 222.202; Me. Rev. Stat. Ann. tit. 17, § 2003-A; Mo. Rev. Stat. § 574.075; Ohio Rev. Code Ann. § 4301.62; S.D. Codified Laws Ann. § 35-1-5.3; Tex. Alcoholic Beverage Code § 101.75; Utah Code Ann. § 32B-4-421; Wash. Rev. Code § 66.44.100.

<sup>39</sup> Mo. Rev. Stat. § 574.075.

<sup>40</sup> Utah Code Ann. § 32B-4-421.

<sup>41</sup> Only in extraordinary cases, such as a history of failing to pay a civil fine or a violation of supervision, may an officer arrest for a criminal offense. See J. David Goodman and Benjamin Mueller, *New York City Police Officers Told to Relax Stance on Petty Offenses*, THE NEW YORK TIMES (June 13, 2017); see also Michael Dresser, *Maryland Senate votes to make open alcohol container violations a civil offense*, THE BALTIMORE SUN (March 3, 2017) (concerning legislative efforts to decriminalize in Maryland); Kathy A. Bolten, *Should public drunkenness be a crime?*, DES MOINES REGISTER (Feb. 11, 2016) (concerning legislative efforts to decriminalize in Iowa); Eric Dexheimer, *Austin officials move to decriminalize public drunkenness*, STATESMAN (September 26, 2018) (concerning legislative efforts to decriminalize in Texas); Sean Webby, *San Jose’s drunk-in-public arrests continue to plunge*, THE MERCURY NEWS (July 3, 2009).

<sup>42</sup> Bob Egelko, *SF judge explains why 66,000 arrest warrants were discarded*, SF GATE (Dec. 7, 2016).

<sup>43</sup> Ore. Rev. Stat. § 430.402; Kan. Stat. Ann. § 65-4059; Mo. Ann. Stat. § 67.305; Mont. Code Ann. § 53-24-107; Nev. Rev. Stat. Ann. § 458.260.

<sup>44</sup> See YouGov, “Poll Results: Public Drinking” (December 4, 2013) (available at <https://today.yougov.com/topics/lifestyle/articles-reports/2013/12/04/poll-results-public-drinking>).

<sup>45</sup> CCRC Advisory Group Memo #27 – Public Opinion Surveys on Ordinal Ranking of Offenses (October 10, 2019).