



First Draft of Report #49 – Parental Kidnapping and Related Statutes

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.

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 #49 – Parental Kidnapping and Related Statutes 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 § 16-1021. Parental Kidnapping Definitions.**
- RCC § 16-1022. Parental Kidnapping Criminal Offense.**
- RCC § 16-1023. Protective Custody and Return of Child.**
- RCC § 16-1024. Expungement of Parental Kidnapping Conviction.**

RCC § 16-1021. Parental Kidnapping Definitions.

For the purposes of this subchapter, the terms:

- (1) “Child” means a person under the age of 16.
- (2) “Lawful custodian” means a person who is authorized to have custody under District law, or by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child.
- (3) “Relative” means a parent, other ancestor, brother, sister, uncle, or aunt, or one who has been lawful custodian at some prior time.

Commentary

***Explanatory Note.** This section defines relevant terms for Subchapter II of Chapter 10 of Title 16. This section replaces current D.C. Code § 16-1021.*

The revised section defines terms as used in Subchapter II of Chapter 10 of Title 16. Paragraph (1) defines the term “child” as a person under the age of 16. Paragraph (2) defines the term “lawful custodian” to mean a person who is authorized to have custody under District law, or by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child. This term is intended to include persons who are authorized to have custody under District law, whether or not that authority is pursuant to a court order. Paragraph (3) defines the term “relative” to mean a parent, other ancestor, brother, sister, uncle, or aunt, or one who has been lawful custodian at some prior time.

***Relation to Current District Law.** The revised statute makes one change that constitutes a substantive change to current District law.*

The revised definition of “lawful custodian” includes any person who is authorized to have custody over a child *under District law*. Under the current D.C. Code definition, “lawful custodian” only includes persons who have custody “by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child.”¹ Under the plain language of the current definition, parents who have lawful custody of their children other than pursuant to a court order² are not “lawful custodians,” so taking a child from such a parent would not constitute parental kidnapping under current law. There is no case law on point. By contrast, under the revised definition of “lawful custodian,” any parent who has custodial rights under District law

¹ D.C. Code § 16-1021 (3).

² For example, children with their birth parents who have not been through court proceedings.

constitutes is included in the definition of “lawful custodian.” This change improves eliminates a gap in liability and improves the proportionality of the revised offense.

One other change to the revised statute is clarificatory in nature and is not intended to substantively change District law.

The revised definition section does not define the term “District.” Omitting this term is not intended to change current District law. The term “District” as used in this subchapter is still intended to refer to the District of Columbia.

Relation to National Legal Trends.

Staff did not comprehensively assess other jurisdiction statutes compared to each of the RCC’s proposed changes in law. The wide variability in other states’ statutory frameworks, definitions, and penalties was prohibitive given agency staffing constraints.

RCC § 16-1022. Parental Kidnapping Criminal Offense.

- (a) *First Degree.* A person commits the offense of first degree parental kidnapping when that person:
 - (1) Commits fourth degree parental kidnapping; and
 - (2) Knowingly takes, conceals, or detains the child outside of the District; and
 - (3) The child is, in fact, outside the custody of the lawful custodian for more than 30 days.
- (b) *Second Degree.* A person commits the offense of second degree parental kidnapping when that person:
 - (1) Commits fourth degree parental kidnapping; and
 - (2) Knowingly takes, conceals, or detains the child outside of the District; and
 - (3) Fails to release the child without injury in a safe place prior to arrest.
- (c) *Third Degree.* A person commits the offense of third degree parental kidnapping when that person:
 - (1) Commits fourth degree parental kidnapping;
 - (2) Knowingly takes, conceals, or detains the child outside of the District;
- (d) *Fourth Degree.* A person commits the offense of fourth degree parental kidnapping when that person:
 - (1) Knowingly takes, conceals, or detains a person who has another lawful custodian;
 - (2) With intent to prevent a lawful custodian from exercising rights to custody of the person;
 - (3) The complainant is, in fact, under the age of 16; and
 - (4) The actor is, in fact, a relative of the complainant, or a person acting pursuant to the direction of a relative of the complainant.
- (e) *Exclusion from Liability.* An actor shall not be subject to prosecution under this section if the act constituting the offense is taken:
 - (1) By a parent fleeing from imminent physical harm to the parent;
 - (2) With the effective consent of the other parent; or
 - (3) With intent to protect the child from imminent physical harm.
- (f) *Defense.*
 - (1) If a person engages in conduct constituting a violation of this section, the person may file a petition in the Superior Court of the District of Columbia that:
 - (A) States that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child; and
 - (B) Seeks to establish custody, to transfer custody, or to revise or to clarify the existing custody order; except that if the Superior Court of the District of Columbia does not have jurisdiction over the custody issue, the person shall seek to establish, transfer, revise, or clarify custody in a court of competent jurisdiction.
 - (2) It is a defense to prosecution under this section that the actor filed a petition as provided in paragraph (f)(1) within 5 business days of the action taken, and that

the court finds that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child.

- (g) *Continuous Offense.* The offense prohibited by this section is continuous in nature and continues for so long as the child is concealed, detained, or otherwise unlawfully physically removed from the lawful custodian.
- (h) *Prosecution by Attorney General.* Prosecutions under this section shall be brought in the Superior Court of the District of Columbia in name of the District by the Attorney General.
- (i) *Penalties.*
 - (1) First degree parental kidnapping is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) Second degree parental kidnapping is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (3) Third degree parental kidnapping is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (4) Fourth degree parental kidnapping is a Class [X] crime, subject to a maximum fine of [X], or both.
 - (5) *Reimbursement of Expenses.* Any expenses incurred by the District in returning the child shall be reimbursed to the District by any person convicted of a violation of this section. Those expenses and costs reasonably incurred by the lawful custodian and child victim as a result of a violation of this section shall be assessed by the court against any person convicted of the violation.
- (j) *Definitions.* For the purposes of this section:
 - (1) The terms “child,” “lawful custodian” and “relative” have the meanings specified in D.C. Code § 16-1021.
 - (2) The terms “intent,” and “knowing” have the meanings specified in RCC § 22E-206; the term “in fact” has the meaning specified in RCC § 22E-207; the terms “Attorney General,” “consent,” and “effective consent” have the meaning specified in RCC § 22E-701.
- (k) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

Commentary

Explanatory Note. This section establishes the parental kidnapping offense, and replaces the current parental kidnapping statute in the D.C. Code. The offense criminalizes taking, concealing, or detaining a child who has another lawful custodian, with intent to prevent a lawful custodian from exercising rights to custody. The offense only applies to relatives of the child or persons acting at the direction of a relative of the child. The revised statute also incorporates statutes that define relevant terms; establish defenses to prosecution; specify that the offense is continuous; specify payment of expenses; specify prosecutorial authority; and establish procedures for expungement. This revised parental kidnapping statute replaces current

D.C. Code §§ 16-1022, 1024, and 1025; and portions of D.C. Code § 16-1023 relating to defenses, parental kidnapping as a continuous offense, and reimbursement of expenses.

Subsection (a) specifies the elements of first degree parental kidnapping. Paragraph (a)(1) requires that the actor must have committed fourth degree parental kidnapping. Paragraph (a)(2) requires that the actor knowingly takes, conceals, or detains the child outside of the District. This paragraph specifies that a “knowingly” culpable mental state applies, a term defined at RCC § 22E-206 to mean that the actor must have been practically certain that he would take, conceal, or detain the child outside of the District. Paragraph (a)(3) requires that the child was, in fact, outside the custody of the lawful custodian for more than 30 days. The term “in fact” is defined in RCC § 22E-207, and specifies that there is no culpable mental state required as to whether the child was outside of the custody of a lawful custodian for more than 30 days.

Subsection (b) specifies the elements of second degree parental kidnapping. Paragraph (b)(1) requires that the actor must have committed fourth degree parental kidnapping. Paragraph (b)(2) requires that the actor knowingly takes, conceals, or detains the child outside of the District. This paragraph specifies that a “knowingly” culpable mental state applies, a term defined at RCC § 22E-206 to mean that the actor must have been practically certain that he would take, conceal, or detain the child outside of the District. Paragraph (b)(3) requires that the actor did not release the child without injury in a safe place prior to arrest. This element is satisfied if the child is not released at all prior to arrest, or if the child is released prior to arrest in a place that creates a risk of harm or injury.

Subsection (c) specifies the elements of third degree parental kidnapping. Paragraph (c)(1) requires that the actor must have committed fourth degree parental kidnapping. Paragraph (c)(2) requires that the actor knowingly takes, conceals, or detains the child outside of the District. This paragraph also specifies that a “knowingly” culpable mental state applies, a term defined at RCC § 22E-206 to mean that the actor must have been practically certain that he would take, conceal, or detain the child outside of the District.

Subsection (d) specifies the elements of fourth degree parental kidnapping. Paragraph (d)(1) requires that the actor knowingly takes, conceals, or detains a person who has another lawful custodian. The term “lawful custodian” is defined D.C. Code § 16-1021. Paragraph (d)(1) specifies a culpable mental state of “knowledge,” a term defined in RCC § 22E-206 to mean the actor must be practically certainty that he would take, conceal, or detain a person. The actor must also be practically certain the person has another lawful custodian.

Subparagraph (d)(1)(A) requires that the actor takes, conceals, or detains a person with intent to prevent a lawful custodian from exercising rights to custody of the child. “Intent” is a term defined in RCC § 22E-206 that her means that the actor was practically certain that he would prevent a lawful custodian from exercising rights to custody of the child. Per RCC § 22E-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the actor actually interfered with another lawful custodian’s right to custody, only that the actor believed to a practical certainty that he would interfere with a right to custody. A right to custody need not be permanent; intent to interfere with limited rights to custody or temporary visitation rights would suffice under this subparagraph.

Subparagraph (d)(1)(B) requires that the complainant, in fact, is under the age of 16. The term “in fact” is defined in RCC § 22E-207, and specifies that there is no culpable mental state as to the complainant’s age.

Subparagraph (d)(1)(C) requires that the actor, in fact, is a relative of the child, or a person who reasonably believes he or she is acting pursuant to direction of a relative of the child. The term “in fact” is defined in RCC § 22E-207, and specifies that there is no culpable mental state as to whether the actor is a relative of the child, or reasonably believed that he or she was acting pursuant to direction of a relative.

Subsection (e) establishes three exclusions to liability. Paragraph (e)(1) establishes that an actor is not liable under this section if he or she was a parent fleeing from imminent physical harm to the parent. Paragraph (e)(2) establishes that an actor is not liable under this section if the other parent effectively consented to the act constituting the offense. The term “effective consent” is defined in RCC § 22E-701, and requires that the consent was obtained other than by deception or coercive threat. Paragraph (e)(3) establishes that an actor is not liable under this section if he or she acted to protect the child from imminent physical harm.

Subsection (f) establishes a defense to prosecution under this section. Under paragraph (f)(1), the actor may file a petition that states that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child; and seeks to establish custody, to transfer custody, or to revise or to clarify an existing custody order. If the actor files a petition with the Superior Court of the District of Columbia within 5 business days of the acts constituting the offense, a court finding that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child shall be a defense to prosecution under this section.

Subsection (g) specifies that parental kidnapping is a continuous offense that continues long as the child is concealed, detained, or otherwise unlawfully physically removed from the lawful custodian.

Subsection (h) specifies that the Attorney General shall have authority to prosecute violations of this section.

Subsection (i) specifies relevant penalties for parental kidnapping. Paragraph (i)(5) specifies that expenses incurred by the District in returning the child shall be reimbursed to the District by any person convicted of a violation of this section.

Subsection (j) cross references terms defined elsewhere in the subchapter, and in the RCC.

Subsection (k) specifies that that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

Relation to Current District Law. *The revised parental kidnapping statute makes three substantive changes to current District law.*

First, the revised parental kidnapping offense no longer provides liability for a parent concealing the child from another parent, absent additional intent. Under the current statute, parental kidnapping includes a parent concealing a child from the child’s other parent, even if there is no additional intent to interfere with the other parent’s custodial rights. The plain language would appear to criminalize a parent with custody at a given time refusing to give the child’s whereabouts to another parent who does not have custody at that time. There is no case law on point. By contrast, the revised parental kidnapping statute requires that the actor had

intent to interfere with a lawful custodian's custodial rights. This change improves the proportionality of the revised offense.

Second, the revised definition of "lawful custodian" under D.C. Code § 16-1021 includes any parent who is authorized to have custody over a child *under District law*. Under the current definition, "lawful custodian" only includes persons who have custody "by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child."³ Under the plain language of the current definition, parents who have lawful custody of their children other than pursuant to a court order⁴ are not "lawful custodians," so taking a child from such a parent would not constitute parental kidnapping under current law. There is no case law on point. By contrast, under the revised definition of "lawful custodian," taking a child from any parent who has custodial rights under District law constitutes parental kidnapping, even if the custodial rights are not pursuant to a court order. This change improves eliminates a gap in liability and improves the proportionality of the revised offense.

Beyond these two substantive changes to current District law, nine other aspects of the revised stalking statute may constitute substantive changes of law.

First, the revised statute requires that the actor "knowingly" takes, conceals, or detains the complainant. The current parental kidnapping statute does not specify a culpable mental state. The current parental kidnapping statute references acting "with the intent to prevent a lawful custodian from exercising rights to custody," "with intent to harbor, secrete, detain, or conceal the child" or "with intent to deprive the other person of the right of limited custody or visitation,"⁵ but it is not clear whether these culpable mental states apply to other elements of the offense, and the phrases "with intent" and "with the intent" are not defined in the statute. There is no case law on point. Resolving this ambiguity, the revised parental kidnapping statute specifies that a "knowingly" culpable mental state applies to the element of taking, concealing, or detaining the complainant. Applying a knowledge requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.⁶ Specifying a culpable mental state for the offense improves the clarity of the revised offense and is consistent with requirements for most other offenses.

Second, the revised statute does not explicitly include taking a child outside of the District for the purpose of depriving a lawful custodian of physical custody of the child after having been served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights. It is unclear whether this prong of parental kidnapping includes taking a child who does not yet have another lawful custodian, in expectation that another person *may* obtain custodial rights to the child, or whether this prong of the current statute requires that the child has another "lawful custodian" who already has custodial rights. There is no DCCA case law on point. Resolving this ambiguity, the revised

³ D.C. Code § 16-1021 (3).

⁴ For example, children with their birth parents who have not been through court proceedings.

⁵ D.C. Code § 16-1022.

⁶ 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)")

parental kidnapping offense requires that the actor intended to interfere with a lawful custodian's pre-existing right to custody. This change improves the clarity of the revised offense.

Third, the revised statute specifies that the actor must take the child "to another location." The current statute merely states that the actor must "take" a child, but does not define the term, and there is no relevant DCCA case law. Resolving this ambiguity, the revised statute specifies that the child must be moved to a different location. Merely seizing a child without any movement is insufficient under the revised statute.⁷ This change improves the clarity of the revised offense.

Fourth, the revised statute specifies that there is no culpable mental state as to the age of the complainant. The current statute requires that the complaining witness is a "child," which is defined as a "person under the age 16 years of age."⁸ The current statute does not specify whether the actor must be aware that the complainant is under 16 years of age. There is no DCCA case law on point. Resolving this ambiguity, the revised statute specifies that there is no culpable mental state requirement as to the age of the complainant. This change improves the clarity of the revised offense.

Fifth, the offense requires that the actor is either a relative or a person who believes he or she is acting pursuant to directions of a relative. The current statute requires that the actor is either a relative of the complainant, or is acting pursuant to directions of a relative. However, the current statute does not specify whether the offense includes a person who incorrectly believes he or she is acting at the direction of a relative. There is no DCCA case law on point. Resolving this ambiguity, the revised statute requires that the actor believed he or she was acting at the direction of a relative. This change improves the clarity of the revised offense.

Sixth, the exclusion to liability under paragraph (e)(2) requires that the other parent gave effective consent to the conduct constituting the offense. Under current law, it is a defense to prosecution that the action constituting the offense was "consented to by the other parent[.]"⁹ The term "consent" is not defined in the statute, and there is no relevant DCCA case law. It is unclear if the defense would apply if the consent were induced by physical force, coercive threats, or deception. Resolving this ambiguity, the revised statute provides the defense only if the other parent gave "effective consent," as defined in RCC § 22E-701¹⁰ to the conduct constituting the offense. This requires that the consent was not obtained by physical force, coercive threat, or deception. This change improves the clarity and proportionality of the revised statute.

Seventh, the jurisdiction provision in current D.C. Code § 16-1023 (h) is omitted. The current statute states that "Any violation of this subchapter is punishable in the District, whether the intent to commit the offense is formed within or without the District, if the child was a resident of the District, present in the District at the time of the taking, or is later found in the District." This language apparently is intended to ensure that District courts have jurisdiction over parental kidnappings that do not entirely occur within the District of Columbia. However, the DCCA has generally held that District courts have jurisdiction over alleged offenses if "one of several constituent elements to the complete offense" occurs within the District, "even though

⁷ Attempt liability may still apply in these cases, provided the requirements for attempt liability under RCC § 22E-301 are satisfied.

⁸ D.C. Code § 16-1021 (1).

⁹ D.C. Code § 16-1023 (a)(4).

¹⁰ "Effective consent means consent other than consent induced by physical force, a coercive threat, or deception."

the remaining elements occurred outside of the District.”¹¹ Consequently, although the DCCA has not applied this rule to parental kidnapping cases, it appears that even without any statutory language in the revised statute on jurisdiction District courts would have jurisdiction over any case in which a child was present in the District at the time of the taking, or was later found in the District. It is unclear, however, whether the current jurisdiction provision would extend jurisdiction to cases where the child is a District resident, but none of the acts constituting the offense occurs within the District. There is no relevant DCCA case law. Resolving this ambiguity, the revised statute applies jurisdictional principles the same as for other crimes, eliminating the offense-specific jurisdiction provision. This change improves the clarity and consistency of the revised offense.

Eighth, the revised statute specifies that the general provisions of Chapters 1 through 6 of Subtitle I of Title 22 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 parental kidnapping 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.

Ninth, the revised statute does not specifically include liability for acting as an aider and abettor, conspirator, or accessory to any of the conduct proscribed by the offense. The current statute prohibits “Act[ing] as an aider and abettor, conspirator, or accessory to any of the actions forbidden by this section[.]”¹² There is no case law on point. By contrast, under the revised parental kidnapping statute, accessory and conspiracy liability for parental kidnapping is subject to the RCC’s general accomplice liability¹³ and conspiracy¹⁴ statutes. The RCC’s general accomplice and conspiracy statutes detail the culpable mental state and other requirements of accomplice and conspiracy liability in a manner consistent with other criminal offenses. To the extent that the RCC’s general conspiracy and accomplice provisions differ from the law on conspiracy and accomplice liability as applied to the current parental kidnapping statute,¹⁵ relying on the RCC’s general provisions may constitute a change in current law.¹⁶ This change improves the clarity and consistency of the revised offense.

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

First, the revised parental kidnapping statute specifically refers to an actor who “takes, conceals, or detains” a child, but does not specifically include “abducting,” “harboring,” or

¹¹ *United States v. Baish*, 460 A.2d 38, 40–41 (D.C. 1983), abrogated on other grounds by *Carrell v. United States*, 80 A.3d 163 (D.C. 2013).

¹² D.C. Code § 16-1022 (b)(6).

¹³ RCC § 22E-210.

¹⁴ RCC § 22E-303.

¹⁵ [The Commission plans to address liability for conduct constituting being an accessory after the fact with recommendations for reform to the District’s obstruction of justice statutes.]

¹⁶ For discussion on the RCC conspiracy statute’s possible changes to current District law, see First Draft of Report #12, Definition of Criminal Conspiracy. For discussion on the RCC’s accomplice liability statute’s possible changes to current District law, see First Draft of Report #22, Accomplice Liability and Related Provisions.

“secreting” a child. However, omitting these terms is not intended to change current District law. The term “taking,” “detaining,” and “concealing” cover all of the conduct covered by “abducting” or “secreting.” Although “harboring” may be broader and include conduct that does not constitute “taking,” “detaining,” or “concealing,” omitting this term does not change current District law. The current penalty provision for parental kidnapping determines penalties based on whether the actor “takes,” “detains,” or “conceals” a child inside or outside the District¹⁷ and there is no penalty specified for merely “harboring” a child under the current statute. Omitting the word “harboring” does not change current District law, and improves the clarity of the revised offense.

Second, the revised statute omits several versions of the offense specified under current law.¹⁸ Omitting these specific versions of parental kidnapping is not intended to change current District law. Each of these versions of parental kidnapping still satisfies the elements of the offense specified in the revised statute. These versions of parental kidnapping all require taking, concealing, or detaining a child, with intent to interfere with a lawful custodian’s rights to custody over the child. Omitting these versions of parental kidnapping improves the clarity of the revised statute.

Third, subsection (h) specifies that the Attorney General shall have prosecutorial authority for violations of this section. Current D.C. Code § 16-1025 states that prosecutions shall be brought “by the Corporation Counsel.”¹⁹ Replacing the term “Corporation Counsel” with “Attorney General” does not change current District law. After § 16-1025 was enacted, the role of Corporation Counsel was re-designated as the Attorney General for the District of Columbia. Replacing the term “Corporation Counsel” with “Attorney General” clarifies the revised statute.

Relation to National Legal Trends.

Staff did not comprehensively assess other jurisdiction statutes compared to each of the RCC’s proposed changes in law. The wide variability in other states’ statutory frameworks, definitions, and penalties was prohibitive given agency staffing constraints.

¹⁷ D.C. Code § 16-1024.

¹⁸ The current statute specifically criminalizes: 1) abducting, taking, or carrying away a child from a person with whom the relative has joint custody pursuant to an order, judgment, or decree of any court, with the intent to prevent a lawful custodian from exercising rights to custody to the child; 2) having obtained physical control of a child for a limited period of time in the exercise of the right to visit with or to be visited by the child or the right of limited custody of the child, pursuant to an order, judgment, or decree of any court, which grants custody of the child to another or jointly with the relative, with intent to harbor, secrete, detain, or conceal the child or to deprive a lawful custodian of the physical custody of the child, keep the child for more than 48 hours after a lawful custodian demands that the child be returned or makes all reasonable efforts to communicate a demand for the child’s return; 3) Having custody of a child pursuant to an order, judgment, or decree of any court, which grants another person limited rights to custody of the child or the right to visit with or to be visited by the child, conceal, harbor, secrete, or detain the child with intent to deprive the other person of the right of limited custody or visitation; 4) Concealing, harboring, secreting, or detaining the child knowing that physical custody of the child was obtained or retained by another in violation of this subsection with the intent to prevent a lawful custodian from exercising rights to custody to the child; and 5) After issuance of a temporary or final order specifying joint custody rights, taking or enticing a child from the other joint custodian in violation of the custody order.

¹⁹ D.C. Code § 16-1025.

RCC § 16-1023. Protective Custody and Return of Child.

- (a) A law enforcement officer may take a child into protective custody if it reasonably appears to the officer that any person is in violation of this subchapter and unlawfully will flee the District with the child.
- (b) A child who has been detained or concealed shall be returned by a law enforcement officer to the lawful custodian or placed in the custody of another entity authorized by law.

Commentary

***Explanatory Note.** This section specifies when a law enforcement officer may take a child into protective custody, and establishes a duty to return a child to a lawful custodian or other entity authorized by law. This section replaces portions of D.C. Code § 16-1023 relating to law enforcement officers' authority to take a child into protective custody, and duty to return the child.*

Subsection (a) specifies that a law enforcement officer may take a child into protective custody when the officer reasonably believes that a person has committed an offense under this subchapter, and unlawfully will flee the District with the child.

Subsection (b) specifies that a law enforcement officer shall return a child who has been detained or conceals to the child's lawful custodian or place the child in custody with another entity authorized by law.

***Relation to Current District Law.** This section does not change current District law. This statute is taken verbatim from current D.C. Code § 16-1023 (d) and (e).*

RCC § 16-1024. Expungement of Parental Kidnapping Conviction.

Any parent convicted in the Superior Court of the District of Columbia of violating any provision of this subchapter with respect to his or her child may apply to the court for an order to expunge from all official records all records relating to the conviction at such time that the parent's youngest child has reached the age of 18 years, provided that the parent has no more than 1 conviction for a violation of this subchapter at the time that the application for expungement is made. Any other person convicted of violating the provisions of this subchapter may apply to the court for an order to expunge all records relating to the conviction 5 years after the conviction, or at such time as the child has reached the age of 18 years, whichever shall later occur, provided that the person has no more than 1 conviction for violating any provision of this subchapter at the time that the application for expungement is made.

Commentary

***Explanatory Note.** This section specifies procedures for expunging record of convictions for parental kidnapping. This section replaces current D.C. Code § 16-1026.*

This section provides that a person convicted of parental kidnapping under D.C. Code § 16-1022 may have all records of the conviction expunged. A person who commits parental kidnapping with respect to his or her own child may apply for expungement when the person's youngest child reaches the age of 18, provided that the person has no more than one conviction for parental kidnapping. A person who commits parental kidnapping with respect to a person who is not his or her child may apply for expungement five years after the conviction, or after the child has reached 18 years of age, whichever occurs later, provided that the person has no more than one conviction for parental kidnapping.

***Relation to Current District Law.** This section does not change current District law. This statute is taken verbatim from current D.C. Code § 16-1026.*