



First Draft of Report #64 – Allowing Dogs To Go At Large

SUBMITTED FOR ADVISORY GROUP REVIEW
September 28, 2020

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
441 FOURTH STREET, NW, SUITE 1C001 SOUTH
WASHINGTON, DC 20001
PHONE: (202) 442-8715
www.ccrdc.dc.gov

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.gov.

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 #XX – Allowing Dogs To Go At Large is November 9, 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.

The Commission recommends repealing in its entirety D.C. Code § 22-1311, the offense of allowing dogs to go at large. The current statute only applies to fierce or dangerous dogs, and female dogs while in heat. As it pertains to fierce or dangerous dogs, the conduct prohibited by D.C. Code § 22-1311 is duplicative of prohibited conduct found either elsewhere in the D.C. Code or in the DCMR, and is unnecessary. As it pertains to female dogs in heat, such conduct is not suitable for criminal punishment.

COMMENTARY

Explanatory Note and Relation to Current District Law.

The statutory section recommended for repeal constitute, D.C. Code § 22-1311, entitled “Allowing dogs to go at large,” provides:

(a) If any owner or possessor of a fierce or dangerous dog shall permit the same to go at large, knowing said dog to be fierce or dangerous, to the danger or annoyance of the inhabitants, he shall upon conviction thereof, be punished by a fine not exceeding \$5,000; and if such animal shall attack or bite any person, the owner or possessor thereof shall, on conviction, be punished by a fine not exceeding \$10,000, and in addition to such punishment the court shall adjudge and order that such animal be forthwith delivered to the poundmaster, and said poundmaster is hereby authorized and directed to kill such animal so delivered to him.

(b) If any owner or possessor of a female dog shall permit her to go at large in the District of Columbia while in heat, he shall, upon conviction thereof, be punished by a fine not exceeding \$20.

While D.C. Code § 22-1311(a) is constructed to apply only to dangerous or fierce dogs, the prohibited conduct is largely addressed in the D.C. Municipal Regulations (DCMR) provision regarding dogs generally. Specifically, Section 24-900 of the DCMR provides in part:

No person owning, keeping, or having custody of a dog in the District shall permit the dog to be on any public space in the District, other than a dog park established by section 9a of the Animal Control Act of 1979, passed on 2nd reading on September 20, 2005 (Enrolled version of Bill 16-28), unless the dog is firmly secured by a substantial lease. The leash shall be held by a person capable of managing the dog.¹

Section 24-900 further provides that anyone who violates the subsection above, “...shall be punished by a fine of not more than three hundred dollars (\$300), or by imprisonment not exceeding ten (10) days”.²

Much like D.C. Code § 22-1311(a), DCMR 24-900, prohibits dogs at large conduct and punishes violators with a monetary penalty. While the maximum monetary penalty allowable under D.C. Code § 22-1311(a) (\$5000) is much greater than what is permissible under the DCMR (\$300), the DCMR also offers a short period of imprisonment for those who violate this regulation.

The main distinction between D.C. Code § 22-1311(a) and DCMR 24-900 is that the former specifically holds owners of known dangerous or fierce dogs accountable when those dogs attack or pose a danger to others. However, the definition of a “fierce or dangerous dog” is not provided in Title 22 and has not been specified by case law.

However, Title 8, Chapter 19, the Environmental and Animal Control and Protection section of the D.C. Code does address dangerous dogs. Specifically, D.C. Code § 8-1905 provides:

It shall be unlawful to:

(1) Keep a potentially dangerous or dangerous dog without a valid certificate of registration issued under § 8-1904;

(2) *Permit a potentially dangerous dog to be outside a proper enclosure unless the potentially dangerous dog is under the control of a responsible person and restrained by a chain or leash, not exceeding 4 feet in length;*

(3) Fail to maintain a dangerous dog exclusively on the owner’s property except for medical treatment or examination. When removed from the owner’s property for medical treatment or examination, the dangerous dog shall be caged or under the control of a responsible person and muzzled and restrained with a chain or leash, not exceeding 4 feet in length. The muzzle shall be made in a manner that will not cause injury to the dangerous dog or interfere with its vision or respiration, but shall prevent it from biting any human being or animal;

(4) Fail to notify the Mayor within 24 hours if a potentially dangerous or dangerous dog is on the loose, is unconfined, has attacked another domestic animal, has attacked a human being, has died, has been sold, or has been given away. If the potentially dangerous or dangerous dog has been sold or given away, the owner shall also provide the Mayor with the name, address, and telephone number of the new owner of the potentially dangerous or dangerous dog;

(5) Fail to surrender a potentially dangerous or dangerous dog to the Mayor for safe confinement pending disposition of the case

when there is a reason to believe that the potentially dangerous or dangerous dog poses a threat to public safety;

(6) Fail to comply with any special security or care requirements for a potentially dangerous or dangerous dog the Mayor may establish pursuant to § 8-1903; or

(7) Remove a dangerous dog from the District without written permission from the Mayor.³

Much like the DCMR, D.C. Code Title 8 Chapter 19 provides for both a monetary penalty and a period of confinement for those who violate the above Code and gives the Office of the Attorney General jurisdiction to prosecute violators.⁴ As D.C. Code § 22-1311(a) provides a monetary penalty as high as \$10,000 when a dangerous or fierce dog attacks or causes injury to another, Title 8 Chapter 19 provides the exact same monetary penalty but applies to a broader scope of conduct.⁵

Notably, a CCRC analysis of data received from the Superior Court of the District of Columbia indicates that over the entire 10-year span of 2009-2018 there were no adult convictions for allowing dogs to go at large under D.C. Code § 22-1311(a), D.C. Code § 8-1905, or DCMR 24-900.

Relation to National Legal Trends.

Many states have prohibitions against allowing dogs to go at large in their criminal codes, though most do not apply only to dangerous dogs. However, the monetary penalties associated with this offense are significantly lower in other jurisdictions when compared to what is permitted under D.C. Code § 22-1311(a), even where dog attacks have occurred.⁶ Conversely, while not many states have codified prohibitions for having female dogs in heat at large,⁷ in those that do have such statutes the penalties were much stricter than the maximum allowable of \$20 under the current D.C. Code.⁸