First Draft of Report #65 – Contributing to the Delinquency of a Minor

SUBMITTED FOR ADVISORY GROUP REVIEW
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission atwww.ccrc.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 #65 – Contributing to the Delinquency of a Minor 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.

RCC § 22E-4601. Contributing to the Delinquency of a Minor.

(a) *First degree.* An actor commits first degree contributing to the delinquency of a minor when that actor:
  (1) In fact, is at least 18 years of age and at least four years older than the complainant;
  (2) Recklessly disregards the fact that the complainant is under the age of 18 years;
  (3) Knowingly engages in one of the following:
    (A) Assists the complainant with the planning or commission of conduct that, in fact, constitutes a District offense or a comparable offense in another jurisdiction;
    (B) Knowingly encourages the complainant to engage in specific conduct that, in fact, constitutes a District offense or a comparable offense in another jurisdiction; or
    (C) Knowingly commands, requests, or tries to persuade the complainant to engage in or aid the planning or commission of specific conduct, which, if carried out, in fact, will constitute a District offense, a comparable offense in another jurisdiction, or an attempt to commit such an offense; and
  (4) In fact, acts with the culpability required for that offense under District law or the comparable offense in another jurisdiction.

(b) *Second degree.* An actor commits second degree contributing to the delinquency of a minor when that actor:
  (1) In fact, is at least 18 years of age and at least four years older than the complainant;
  (2) Recklessly disregards the fact that the complainant is under the age of 18 years; and
  (3) Knowingly engages in one of the following:
    (A) Assists the complainant with the planning or commission of conduct constituting chronic truancy or a violation of a court order;
    (B) Encourages the complainant to engage in specific conduct constituting chronic truancy or a violation of a court order;
    (C) Commands, requests, or tries to persuade the complainant to engage in or aid the planning or commission of specific conduct, which, if carried out, will constitute chronic truancy or a violation of a court order, or an attempt to commit chronic truancy or a violation of a court order; or
    (D) Causes the complainant to engage in conduct constituting chronic truancy or a violation of a court order.

(c) *Exclusions from liability.* An actor does not commit an offense under this section when, in fact, the conduct constituting a District offense or a comparable offense in another jurisdiction, constitutes an act of civil disobedience.

(d) *Relationship to minor's conduct.* An actor may be convicted of contributing to the delinquency of a minor upon proof of the commission of the offense although the complainant:
  (1) Has not been prosecuted, subject to delinquency proceedings, convicted, adjudicated delinquent, or found in contempt of court;
  (2) Has been convicted or found delinquent of a different offense or degree of an offense; or
  (3) Has been acquitted, found to be not delinquent, or found to not be in contempt of court.

(e) *Affirmative defense.* It is an affirmative defense to liability under this section that the actor engages in the conduct constituting the offense:
    (1) With the intent of safeguarding or promoting the welfare of the complainant; and
    (2) In fact, such conduct:
        (A) Is reasonable in manner and degree, under all the circumstances; and
        (B) Does not create a substantial risk of, or cause, death or serious bodily injury.

(f) *Penalties.*
    (1) First degree contributing to the delinquency of a minor is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of X], or both, when the complainant's conduct, in fact, constitutes a District offense that is a felony, or a comparable offense in another jurisdiction.
    (2) Except as provided in paragraph (f)(1) of this section, first degree contributing to the delinquency of a minor is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of X], or both.
    (3) Second degree contributing to the delinquency of a minor is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of X], or both.
    (4) *Merger*. A conviction for contributing to the delinquency of a minor does not merge with any other offense arising from the same course of conduct.

(g) *Definitions*.
    (1) The terms "intent," "knowingly," and "recklessly" have the meanings specified in RCC § 22E-206; the term "in fact" has the meaning specified in RCC § 22E-207; the term "attempt" has the meaning specified in RCC § 22E-301; and the terms "actor," "complainant," "comparable offense," "felony," and "serious bodily injury" have the meanings specified in RCC § 22E-701.
    (2) In this section, the term "chronic truancy" means being subject to compulsory school attendance and being absent from school without a legitimate excuse for 10 or more full days within a single school year.

PENALTY RECOMMENDATION

The CCRC recommends the following penalties:

Subsection (f)(1) [felony offenses] – Class 9 [3 years];
Subsection (f)(2) [misdemeanor offenses] – Class B [180 days];
Subsection (f)(3) [court orders or truancy]– Class C [90 days].

COMMENTARY

Explanatory Note. *The RCC contributing to the delinquency of a minor statute prohibits assisting, encouraging, or soliciting a person under the age of 18 years to plan or commit a criminal offense, violate a court order, or engage in chronic truancy. The revised contributing to the delinquency of a minor statute applies to actors that are at least 18 years of age and at least four years older than the minor complainant. The penalty gradations are based on whether the actor assisted, encouraged, or solicited the planning or commission of a criminal offense or the planning or commission of a violation of a court order or conduct that constitutes chronic truancy.*

The revised contributing to the delinquency of a minor statute replaces the current contributing to the delinquency of a minor offense[1] *in the current D.C. Code.*

Subsection (a) specifies the prohibited conduct for first degree contributing to the delinquency of a minor. Paragraph (a)(1) and paragraph (a)(2) specify the age requirements for the actor and the complainant. Paragraph (a)(1) requires that, "in fact," the actor is at least 18 years of age and at least four years older than the complainant. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to all the elements in paragraph (a)(1) and there is no culpable mental state required for the age of the actor or the age gap. Paragraph (a)(2) requires that the actor "recklessly disregard" the fact that the complainant is under the age of 18 years. "Recklessly disregard" is a defined term in RCC § 22E-206 that here means the actor was aware of a substantial risk that the complainant was under 18 years of age.

Paragraph (a)(3) requires that the actor "knowingly" engages in one of the types of prohibited conduct specified in subparagraphs (a)(3)(A), (a)(3)(B), or (a)(3)(C). "Knowingly" is a defined term in RCC § 22E-206 that here means the actor must be "practically certain" that he or she will engage in one of the specified types of prohibited conduct.

Subparagraph (a)(3)(A) requires that the actor assists the complainant with the planning or commission of conduct that, in fact, constitutes a District offense or a comparable offense in another jurisdiction. Per the rule of construction in RCC § 22E-207, the "knowingly" culpable mental state in paragraph (a)(3) applies to all the elements in subparagraph (a)(3)(A) until "in fact" is specified. Here, "knowingly" means that the actor must be "practically certain" that he or she assists the complainant with the planning or commission of conduct. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to the remaining elements in subparagraph (a)(3)(A). There is no culpable mental state required for the fact that the conduct constitutes a District offense or a comparable offense in another jurisdiction. "Comparable offense" is a defined term in RCC § 22E-701. The requirement in subparagraph (a)(3)(A) that the actor "assists" the complainant "with the planning or commission of conduct" is the same requirement that is in the RCC general provision for accomplice liability (RCC § 22E-210) and is discussed in detail in the commentary to RCC § 22E-210.

Subparagraph (a)(3)(B) requires that the actor encourages the complainant to engage in specific conduct that, in fact, constitutes a District offense or a comparable offense in another jurisdiction. Subparagraph (a)(3)(B) specifies a "knowingly" culpable mental state that, per the rule of construction in RCC § 22E-207, applies to all the elements in subparagraph (a)(3)(B) until "in fact" is specified. "Knowingly" is a defined term in RCC § 22E-206 that here means the actor must be "practically certain" that he or she encourages the complainant to engage in specific conduct. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to the remaining elements in subparagraph (a)(3)(B). There is no culpable mental state required for the fact that the conduct constitutes a District offense or a comparable offense in another jurisdiction. "Comparable offense" is a defined term in RCC § 22E-701. The requirement in subparagraph (a)(3)(B) that the actor "encourages" the complainant "to engage in specific conduct" is the same requirement that is in the RCC general provision for

[1] D.C. Code § 22-811.

accomplice liability (RCC § 22E-210) and is discussed in detail in the commentary to RCC § 22E-210.

Subparagraph (a)(3)(C) requires that the actor commands, requests, or tries to persuade the complainant to engage in or aid the planning or commission of specific conduct, which, if carried out, in fact, will constitute a District offense, a comparable offense in another jurisdiction, or an attempt to commit such an offense. Subparagraph (a)(3)(C) specifies a "knowingly" culpable mental state that, per the rule of construction in RCC § 22E-207, applies to all the elements in subparagraph (a)(3)(C) until "in fact" is specified. "Knowingly" is a defined term in RCC § 22E-206 that here means the actor must be "practically certain" that he or she commands, requests, or tries to persuade the complainant to engage in or aid the planning or commission of specific conduct. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to the remaining elements in subparagraph (a)(3)(C). There is no culpable mental state required for the fact that the conduct constitutes a District offense or a comparable offense in another jurisdiction, or an attempt to commit such an offense. "Attempt" is a defined term in RCC § 22E-301 and "comparable offense" is a defined term in RCC § 22E-701. The requirement in subparagraph (a)(3)(C) that the actor "commands, requests, or tries to persuade" the complainant to "engage in or aid the planning or commission of specific conduct" is the same requirement that is in the RCC general provision for solicitation liability (RCC § 22E-302) and is discussed in detail in the commentary to RCC § 22E-210.

Paragraph (a)(4) requires that the actor "in fact" acts with the culpability required for that offense under District law or the comparable offense in another jurisdiction. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to all elements in subparagraph (a)(4) and there is no culpable mental state requirement for the fact that the actor acts with the culpability required for an offense under District law or the comparable offense in another jurisdiction. The requirement in paragraph (a)(4) that the actor acts with the culpability required for an offense under District law or the comparable offenses in another jurisdiction is the same requirement that is in the RCC general provisions for accomplice liability (RCC § 22E-210) and solicitation liability (RCC § 22E-302) and is discussed in detail in the commentary to those sections.

Subsection (b) specifies the prohibited conduct for second degree contributing to the delinquency of a minor. Paragraph (b)(1) and paragraph (b)(2) specify the same age requirements for the actor and the complainant that are discussed above for paragraph (a)(1) and paragraph (a)(2) of first degree contributing to the delinquency of a minor. Subparagraphs (b)(3)(A), (b)(3)(B), (b)(3)(C), and (b)(3)(D) specify the types of prohibited conduct for second degree contributing to the delinquency of a minor.

Subparagraph (b)(3)(A) requires that the actor assists the complainant with the planning or commission of conduct constituting chronic truancy or a violation of a court order. Per the rule of construction in RCC § 22E-207, the "knowingly" culpable mental state in paragraph (b)(3) applies to all the elements in subparagraph (b)(3)(A). "Knowingly" is a defined term in RCC § 22E-206 that here means that the actor must be "practically certain" that he or she assists the complainant with the planning or commission of conduct that constitutes chronic truancy or a violation of a court order. "Chronic truancy" is a defined term in paragraph (g)(2). The requirement in subparagraph (b)(3)(A) that the actor "assists" the complainant "with the planning or commission

of conduct" is the same requirement that is in the RCC general provision for accomplice liability (RCC § 22E-210) and is discussed in detail in the commentary to RCC § 22E-210.

Subparagraph (b)(3)(B) requires that the actor encourages the complainant to engage in specific conduct constituting chronic truancy or a violation of a court order. Per the rule of construction in RCC § 22E-207, the "knowingly" culpable mental state in paragraph (b)(3) applies to all the elements in subparagraph (b)(3)(B). "Knowingly" is a defined term in RCC § 22E-206 that here means that the actor must be "practically certain" that he or she encourages the complainant to engage in specific conduct constituting chronic truancy or a violation of a court order. "Chronic truancy" is a defined term in paragraph (g)(2). The requirement in subparagraph (b)(3)(B) that the actor "encourages" the complainant "to engage in specific conduct" is the same requirement that is in the RCC general provision for accomplice liability (RCC § 22E-210) and is discussed in detail in the commentary to RCC § 22E-210.

Subparagraph (b)(3)(C) requires that the actor commands, requests, or tries to persuade the complainant to engage in or aid the planning or commission of specific conduct, which, if carried out, will constitute chronic truancy or a violation of a court order, or an attempt to commit chronic truancy or a violation of a court order. Per the rule of construction in RCC § 22E-207, the "knowingly" culpable mental state in paragraph (b)(3) applies to all the elements in subparagraph (b)(3)(C). "Knowingly" is a defined term in RCC § 22E-206 that here means the actor must be "practically certain" that he or she commands, requests, or tries to persuade the complainant to engage in or aid the planning or commission of specific conduct which, if carried out, will constitute chronic truancy or a violation of a court order, or an attempt to commit chronic truancy or a violation of a court order. "Chronic truancy" is a defined term in paragraph (g)(2). The requirement in subparagraph (b)(3)(C) that the actor "commands, requests, or tries to persuade" the complainant to "engage in or aid the planning or commission of specific conduct" is the same requirement that is in the RCC general provision for solicitation liability (RCC § 22E-302) and is discussed in detail in the commentary to RCC § 22E-210.

Subparagraph (b)(3)(D) requires that the actor causes the complainant to engage in conduct constituting chronic truancy or a violation of a court order.[2] Per the rule of construction in RCC § 22E-207, the "knowingly" culpable mental state in paragraph (b)(3) applies to all the elements in subparagraph (a)(3)(D). "Knowingly" is a defined term in RCC § 22E-206 that here means that the actor must be "practically certain" that he or she causes the complainant to engage in conduct constituting chronic truancy or a violation of a court order. "Chronic truancy" is a defined term in paragraph (g)(2).

Subsection (c) provides an exclusion from for the offense when, in fact, the conduct constituting a District offense or a comparable offense in another jurisdiction constitutes an act of civil disobedience. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to all the elements in subsection (c). There is no culpable mental state required for the fact that the conduct that constitutes a District offense or a comparable offense

[2] First degree and second degree contributing to the delinquency of a minor both prohibit assisting, encouraging, or soliciting a minor to engage in specific conduct, but second degree specifically prohibits "caus[ing]" the complainant to engage in specific conduct and first degree does not. RCC § 22E-211, Liability for Causing Crime by an Innocent or Irresponsible Person, generally provides that a person is liable for causing crime by an innocent party. However, as the violation of a court order and truancy do not necessarily constitute a crime under RCC 22E-211, separate liability for such wrongdoing is provided in the second degree contributing to the delinquency of a minor statute.

in another jurisdiction is an act of civil disobedience. "Comparable offense" is a defined term in RCC § 22E-701.

Subsection (d) establishes that an actor may be convicted of contributing to the delinquency of a minor upon proof of the commission of the offense, even though the minor complainant: 1) Has not been prosecuted, subject to delinquency proceedings, convicted, adjudicated delinquent, or found in contempt of court; 2) Has been convicted or found delinquent of a different offense or degree of an offense; or 3) Has been acquitted, found to be not delinquent, or found to not be in contempt of court.

Subsection (e) codifies an affirmative defense for an actor that engages in the conduct constituting the offense and meets certain requirements. First, per paragraph (e)(1), the actor must have the "intent" of safeguarding or promoting the welfare of the complainant. "Intent" is a defined term in RCC § 22E-206 that here means the actor was practically certain that his or her conduct would safeguard or promote the welfare of the complainant. 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's conduct safeguarded or promoted the welfare of the complainant, only that the actor believed to a practical certainty that it would. The RCC general parental defense (RCC § 22E-408) also requires intent to safeguard or promote the welfare of a minor complainant and the commentary to that section discusses this requirement in detail.[3]

Paragraph (e)(2), subparagraph (e)(2)(A), and subparagraph (e)(2)(B) specify two additional requirements for the affirmative defense. Paragraph (e)(2) and subparagraph (e)(2)(A) require that, in fact, the conduct be reasonable in manner and degree, under all the circumstances. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to all the elements in paragraph (e)(2) and subparagraph (e)(2)(A). There is no culpable mental state required for the fact that the conduct is reasonable in manner and degree, under all the circumstances. The RCC general parental defense (RCC § 22E-408) also requires that the conduct be reasonable in manner and degree, under all the circumstances, and the commentary to that section discusses this requirement in detail.

Paragraph (e)(2) and subparagraph (e)(2)(B) require that, in fact, the conduct does not create a substantial risk of, or cause, death or serious bodily injury. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to all the elements in paragraph (e)(2) and subparagraph (e)(2)(B). There is no culpable mental state required for the fact the conduct does not create a substantial risk of, or cause, death or serious bodily injury. "Serious bodily injury" is a defined term in RCC § 22E-701. The RCC general parental defense (RCC § 22E-408) also requires that the conduct does not create a substantial risk of, or cause, death or serious bodily injury and the commentary to that section discusses this requirement in detail.

Subsection (f) specifies the penalties for the revised contributing to the delinquency of a minor statute. Paragraph (f)(1) establishes the penalty for first degree contributing to the delinquency of a minor when the complainant's conduct, in fact, constitutes a District offense that is a felony or a comparable offense in another jurisdiction. The phrase "in fact" is a defined term in RCC § 22E-207 that indicates there is no culpable mental state requirement as to a given

[3] However, the RCC parental defense includes the prevention or punishment of misconduct in the intent to safeguard or promote welfare, and the affirmative defense in the RCC contributing statute does not.

element. Per the rules of interpretation in RCC § 22E-207, "in fact" applies to all the elements in paragraph (f)(1). Here, "in fact" means that there is no culpable mental state requirement for the fact that the complainant's conduct constitutes a District offense that is a felony, or a comparable offense in another jurisdiction. "Comparable offense" and "felony" are defined terms in RCC § 22E-701.

Paragraph (f)(2) establishes the penalty for first degree contributing to the delinquency of a minor when the penalty in paragraph (f)(1) does not apply. If the complainant's conduct does not constitute a District offense that is a felony, or a comparable offense to a District felony in another jurisdiction, or if this cannot be proven beyond a reasonable doubt, then the penalty in paragraph (f)(2) for first degree contributing to the delinquency of a minor applies.

Paragraph (f)(3) establishes the penalty for second degree contributing to the delinquency of a minor.

Paragraph (f)(4) states that a conviction for contributing to the delinquency of a minor does not merge with any other offense arising from the same course of conduct. However, a defendant may still receive concurrent sentences for these convictions. The meaning of "same course of conduct" is discussed in detail in the commentary to the RCC general merger provision (RCC § 22E-214).

Subsection (g) cross-references applicable definitions located elsewhere in the RCC and also provides a definition of "chronic truancy" applicable to this statute.

Relation to Current District Law. *The revised contributing to the delinquency of a minor statute clearly changes current District law in eight main ways.*

First, the revised contributing to the delinquency of a minor statute eliminates as a discrete basis of liability encouraging, causing, etc., a minor to run away from home for the purpose of criminal activity. The current D.C. Code contributing to the delinquency of a minor statute prohibits, in relevant part, encouraging, causing, etc., a minor to "[r]un away for the purpose of criminal activity from the place of abode of his or her parent, guardian, or other custodian."[4] The colloquial phrase "[r]un away" is not defined by statute. It is unclear whether this provision differs from the current statute's prohibitions on encouraging, causing, etc., a minor to violate a criminal law, a court order, or be truant from school.[5] There is no DCCA case law interpreting this provision. In contrast, the revised contributing to the delinquency of a minor statute eliminates as a discrete basis of liability encouraging, causing, etc., a minor to run away from home for the purpose of criminal activity. To the extent that this conduct overlaps with assisting, encouraging, or soliciting a minor to plan or commit a criminal offense, violate a court order, or engage in chronic truancy, the revised contributing to the delinquency of a minor statute still provides liability. To the extent that the current provision prohibits conduct beyond assisting, encouraging, or soliciting a minor to plan or commit a criminal offense, violate a court order, or engage in chronic truancy, there is no liability under the revised contributing to the delinquency of a minor statute. However, an adult that is civilly responsible for the health, welfare, or supervision of a

[4] D.C. Code § 22-811(a)(3).

[5] D.C. Code § 22-811(a), (a)(1), (a)(4), (a)(5), (a)(7) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (1) Be truant from school; (4) Violate a court order; (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience . . . (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.").

minor that encourages, causes, etc., that minor to run away from home, for any reason, may have liability under the RCC criminal abuse of a minor (RCC § 22E-1501) or RCC criminal neglect of a minor ((RCC § 22E-1502) statutes if the adult causes or creates a risk of specified physical or mental harm. This change improves the clarity, consistency, and proportionality of the revised statutes.

Second, the revised contributing to the delinquency of a minor statute prohibits assisting, encouraging, or soliciting the planning or commission of an offense in another jurisdiction that is comparable to a misdemeanor in the District. The current D.C. Code contributing to the delinquency of a minor statute limits encouraging, causing, etc., a minor to commit a misdemeanor to District law misdemeanors.[6] For felonies, however, the current D.C. Code contributing to the delinquency of a minor statute prohibits encouraging, causing, etc., a minor to commit both District law felonies,[7] and offenses in other jurisdictions that are comparable to District law felonies.[8] In contrast, the revised contributing to the delinquency of a minor statute extends to assisting, encouraging, or soliciting the planning or commission of an offense in another jurisdiction that is a comparable offense to a misdemeanor in the District. "Comparable offense" is a defined term in the RCC that requires an offense to have elements that satisfy a District offense.[9] There is no clear reason for excluding an offense in another jurisdiction simply because it is comparable to a District law misdemeanor, as opposed to a District law felony. Although felonies are generally more serious charges than misdemeanors, there is still possible or actual legal jeopardy for the minor and the commission or possible commission of a criminal offense. This change improves the clarity, consistency, and proportionality of the revised statute, and removes a gap in liability.

Third, for truancy, the revised contributing to the delinquency of a minor statute requires that a minor be subject to compulsory school attendance and be absent for ten or more full days within a single school year. The current D.C. Code contributing to the delinquency of a minor statute prohibits, in relevant part, encouraging, causing, etc., a minor to "[b]e truant from school."[10] The statute does not define "truant" and there is no DCCA case law interpreting this provision. It is unclear how much school a minor must miss in order to be "truant," or whether the minor must be subject to the District's compulsory school attendance laws. Although the scope of "truant" is unclear in the current D.C. Code contributing to the delinquency of a minor statute, the District's current compulsory school attendance laws require an absence of either two "full-day sessions" or

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[6] D.C. Code § 22-811(a), (a)(5) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience.").

[7] D.C. Code § 22-811(a), (a)(7) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.").

[8] D.C. Code § 22-811(a), (a)(7) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.").

[9] RCC § 22E-701 ("'Comparable offense' means a crime committed against the District of Columbia, a state, a federally-recognized Indian tribe, or the United States and its territories, with elements that would necessarily prove the elements of a corresponding District crime.").

[10] D.C. Code § 22-811(a), (a)(1).

four "half-day sessions" during a school month before criminal penalties can be imposed on a parent, guardian, or other responsible adult—a fine of least $100 or a maximum term of imprisonment of five days for each offense.[11] In addition, current D.C. Municipal Regulations define "chronically truant" as "absent from school without a legitimate excuse for ten (10) or more days within a single school year,"[12] and when a student satisfies this definition, it triggers school-based intervention.[13] In contrast, the revised contributing to the delinquency of a minor statute, through the definition of "chronic truancy" in paragraph (g)(2), requires that a minor be subject to compulsory school attendance and be absent without a legitimate excuse for ten or more full days within a single school year. The RCC requirement that the minor be subject to "compulsory school attendance" is consistent with the District's current compulsory school attendance laws.[14] The revised contributing to the delinquency of a minor statute adopts the requirement of 10 or more full-day absences from the definition of "chronically truant" in the current D.C. Municipal Regulations, as opposed to the requirements in the District's compulsory school attendance laws for two main reasons. First, the revised contributing to the delinquency of a minor statute imposes a significantly higher penalty than five days' incarceration in the District's compulsory school attendance law. Second, unlike the District's compulsory school attendance laws, assisting, encouraging, or soliciting a minor to engage in chronic truancy is sufficient for liability in the RCC contributing to the delinquency of a minor statute—an actual absence is not required. This change improves the clarity, consistency, and proportionality of the revised statute.

Fourth, the revised contributing to the delinquency of a minor statute provides an affirmative defense for an adult defendant that intends to safeguard or promote the welfare of the minor complainant. The current D.C. Code contributing to the delinquency of a minor statute does not have any such affirmative defense, and the D.C. Code does not codify any general defenses. As a result, the current D.C. Code contributing to the delinquency of a minor statute appears to apply to adults who, out of concern for the minor's well-being, encourage, cause, etc., a minor to

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[11] The District's current compulsory school attendance laws state that "The parent, guardian, or other person who has custody or control of a minor covered by § 38-202(a) who is absent from school without a valid excuse shall be guilty of a misdemeanor." D.C. Code § 38-203(d). The penalty is a fine of at least $100, a maximum term of imprisonment of 5 days, or both, for "each offense," which is defined as "[e]ach unlawful absence of a minor for 2 full-day sessions or for 4 half-day sessions during a school month shall constitute a separate offense." D.C. Code § 38-203(e), (f) ("(e) Any person convicted of failure to keep a minor in regular attendance in a public, independent, private, or parochial school, or failure to provide regular private instruction acceptable to the Board may be fined not less than $100 or imprisoned for not more than 5 days, or both for each offense. (f) Each unlawful absence of a minor for 2 full-day sessions or for 4 half-day sessions during a school month shall constitute a separate offense.").
A defendant may receive a deferred sentence and be placed on probation for a first offense, and for any conviction, the courts "shall" consider requiring community service as an alternative to the fine, incarceration, or both. D.C. Code § 38-203(g), (h).

[12] D.C. Mun. Regs. tit. 5-A, § 2199 (defining "chronically truant" as "A school aged child who is absent from school without a legitimate excuse for ten (10) or more days within a single school year.").

[13] D.C. Mun. Regs. tit. 5-A, § 2103(4) ("A student who accumulates ten (10) unexcused absences at any time during a school year shall be considered to be chronically truant. The school-based student support team assigned to the student shall notify the school administrator within two (2) school days after the tenth (10^{th}) unexcused absence with a plan for immediate intervention including delivery of community-based programs and any other assistance or services to identify and address the student's needs on an emergency basis.").

[14] It is also consistent with the definition of "child in need of supervision" in Title 16 of the current D.C. Code. D.C. Code § 16-2301(8) (defining "child in need of supervision" as "a child who- (A)(i) subject to compulsory school attendance and habitually truant from school without justification; (ii) has committed an offense committable only by children; or (iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and (B) is in need of care or rehabilitation.").

engage in the prohibited conduct.[15] There is no DCCA case law on this issue. In contrast, the revised contributing to the delinquency of a minor statute has an affirmative defense for an adult defendant that intends to safeguard or promote the welfare of the minor complainant. The defense applies regardless of whether the adult has a duty of care to the minor.[16] In addition to the intent requirement, the affirmative defense requires that, in fact, the actor's conduct is reasonable in manner and degree under all the circumstances and does not create a substantial risk of, or cause, death or serious bodily injury. These requirements match several of the requirements in the RCC parental defense (RCC § 22E-408) and are discussed further in the commentary to that statute. This change improves the clarity, consistency, and proportionality of the revised statute.

Fifth, the revised contributing to the delinquency of a minor statute eliminates the special recidivist penalty in the current D.C. Code contributing to the delinquency of a minor statute. The special recidivist penalty enhancement applies to all prohibited conduct in the current D.C. Code contributing to the delinquency of a minor statute except encouraging, causing, etc., a minor to commit a felony, and provides a maximum term of imprisonment of three years.[17] In contrast, in the RCC, the general recidivism enhancement (RCC § 22E-606) will provide enhanced punishment for recidivist contributing to the delinquency of a minor, consistent with other offenses. There is no clear basis for singling out contributing to the delinquency of a minor for a recidivist enhancement as compared to other offenses of equal seriousness. The RCC general recidivism enhancement applies to a felony conviction of the revised contributing to the delinquency of a minor statute, but does not apply to a misdemeanor conviction because contributing to the delinquency of a minor is not an offense against persons in the RCC. However, if a defendant is convicted of certain misdemeanor offenses against persons in addition to the RCC contributing to the delinquency of a minor statute, the RCC general recidivist enhancement would apply to that misdemeanor conviction.[18] This change improves the proportionality and consistency of the revised contributing statute.

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[15] For example, if an adult neighbor is concerned for the minor's well-being and speaks to the minor before school, making the minor late for school, the adult neighbor may have caused the minor to be "truant" within the meaning of the current D.C. Code contributing to the delinquency of a minor statute. Or, if that adult takes the minor to a doctor's appointment after school and causes the minor to miss court-ordered community service, that adult may have caused the minor to violate a court order within the meaning of the current D.C. Code contributing to the delinquency of a minor statute.

[16] RCC § 22E-408 codifies several defenses for actors that have a responsibility for the care, discipline, or safety of a complainant and act consistently with that responsibility or with the intent of safeguarding or promoting the well-being of the complainant. These defenses apply to many RCC offenses against persons, and the general RCC provisions for accomplice and solicitation liability as they apply to these offenses against persons. The general RCC provisions for accomplice and solicitation liability require a culpable mental state of "purposely"; a defendant that has a culpable mental state of "knowingly" cannot be charged under them.

As is discussed elsewhere in this commentary, the RCC contributing to the delinquency of a minor statute provides accomplice and solicitation liability with a lower culpable mental state of "knowingly." This lower culpable mental state, and the fact that the RCC contributing to the delinquency of a minor statute does not require a duty of care to the minor, justify a broad affirmative defense when such an adult acts in the best interests of the minor.

[17] D.C. Code § 22-811(b)(2) ("A person convicted of violating subsection (a)(2)-(6) of this section, having previously been convicted of an offense under subsection (a)(2)-(6) of this section or a substantially similar offense in this or any other jurisdiction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both.").

[18] For example, if a defendant is convicted of the revised contributing to the delinquency of a minor statute on the basis of helping the complainant commit misdemeanor assault and is also convicted of misdemeanor assault as an accomplice, the misdemeanor contributing to the delinquency of a minor conviction is not subject to the misdemeanor recidivist enhancement in RCC § 22E-606, but the assault conviction is. Under paragraph (f)(4) of the revised statute,

Sixth, the revised contributing to the delinquency of a minor statute eliminates the special penalties in the current D.C. Code contributing to the delinquency of a minor statute for serious bodily injury or death. The current D.C. Code contributing to the delinquency of a minor statute provides for a maximum term of imprisonment of five years if the prohibited conduct "results in serious bodily injury to the minor [complainant] or any other person"[19] and a maximum term of imprisonment 10 years if prohibited conduct "results in the death of the minor [complainant] or any other person."[20] The current D.C. Code contributing to the delinquency of a minor statute does not define "serious bodily injury"[21] and there is no DCCA case law interpreting the term for this statute. In addition, it is unclear in both enhanced penalties if the prohibited conduct must cause serious bodily injury or death, or if "results in" is broader and permits enhanced penalties without causation. There is no DCCA case law on this issue. In contrast, the RCC contributing to the delinquency of a minor statute eliminates the special penalties for contributing to the delinquency of a minor that "results" in serious bodily injury or death. There is no clear basis for singling out contributing to the delinquency of a minor for these enhanced penalties as compared to other offenses of equal seriousness. In addition, the RCC assault statute provides liability for "caus[ing]" any person "bodily injury," including "serious bodily injury," as those terms are defined in RCC § 22E-701, and the RCC homicide statutes provide liability for "caus[ing]" any person death, provided that the other elements of these offenses are satisfied.[22] Per subparagraph (f)(4) of the revised contributing to the delinquency of a minor statute, a defendant faces liability both for contributing to the delinquency of a minor and any assault or homicide offense arising from the same course of conduct because the convictions do not merge.[23] This change improves the clarity, consistency, and proportionality of the revised statutes.

Seventh, the revised contributing to the delinquency of a minor statute grades causing, assisting, encouraging, or soliciting chronic truancy or a violation of a court order less seriously than assisting, encouraging, or soliciting the commission of a misdemeanor. In the current D.C.

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the contributing to the delinquency of a minor and assault convictions do not merge, although a defendant may be sentenced concurrently.

[19] D.C. Code § 22-811(b)(4) ("A person convicted of violating subsection (a) of this section that results in serious bodily injury to the minor or any other person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.").

[20] D.C. Code § 22-811(b)(5) ("A person convicted of violating subsection (a) of this section that results in the death of the minor or any other person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.").

[21] The current D.C. Code aggravated assault statute requires "serious bodily injury," but does not statutorily define the term. D.C. Code § 22-404.01. However, "serious bodily injury" is statutorily defined for the current D.C. Code sexual abuse statutes (D.C. Code § 22-3001(7)), and the DCCA has generally applied this definition to the aggravated assault statute. *Nixon v. United States*, 730 A.2d 145, 150 (D.C. 1999) ("Since the definition of "serious bodily injury" which appears in . . . the District's sexual abuse statute . . . is consistent with that followed in the majority of jurisdictions, we adopt it for the purpose of determining whether the government met its burden to prove 'serious bodily injury' under the aggravated assault statute."). It is unclear whether the DCCA would similarly apply the definition of "serious bodily injury" in the current D.C. Code sexual abuse statutes to the current D.C. Code contributing to the delinquency of a minor statute.

[22] In addition, the RCC assault statute and the RCC murder statute provide enhanced penalties if the actor is reckless as to the fact that the complainant is a "protected person," defined in RCC § 22E-701 to include a complainant that is under 18 years of age, when, in fact, the actor is 18 years of age or older and at least 4 years older than the complainant. These are the same age and age gap requirements for an adult actor and a minor complainant that are in the RCC contributing to the delinquency of a minor statute.

[23] However, a defendant could be sentenced concurrently for the revised contributing to the delinquency of a minor offense and any assault or homicide offense arising from the same course of conduct.

Code contributing to the delinquency of a minor statute, encouraging, causing, etc., the commission of a misdemeanor, the violation of a court order, or truancy has a maximum term of imprisonment of 6 months if the enhanced penalties for recidivism, serious bodily injury, or death do not apply.[24] In contrast, the revised contributing to the delinquency of a minor statute grades assisting, encouraging, or soliciting the commission of a misdemeanor more seriously than causing, assisting, encouraging, or soliciting the violation of a court order or chronic truancy. The commission of a misdemeanor is criminal conduct and is generally more serious than either violating a court order or chronic truancy. This change improves the proportionality of the revised statute.

Eighth, the revised contributing to the delinquency of a minor statute does not assign prosecutorial authority to the Attorney General for the District of Columbia (OAG), which makes it an offense that the United States Attorney for the District of Columbia (USAO) prosecutes. The current D.C. Code contributing to the delinquency of a minor statute states that OAG "shall" prosecute all violations that have a maximum term of imprisonment of six months, while USAO shall prosecute violations subject to higher sentences.[25] The legislative history for the current D.C. Code contributing to the delinquency of a minor offense indicates that the Council regarded it as a new offense,[26] and the sole rationale for assignment of prosecutorial authority to OAG was the likelihood that OAG would be involved in prosecution of the underlying violations by the minor.[27] However, controlling DCCA case law based on the Home Rule Act precludes Council assignment of prosecutorial authority to OAG unless the offenses falls into one of the categories in D.C. Code § 23-101(a).[28] In contrast to current law, the revised contributing to the delinquency of a minor statute does not assign any prosecutorial authority to OAG because doing so appears to be a violation of District case law based on the Home Rule Act. There is no evidence that the current contributing to the delinquency of a minor statute meets or was intended to meet the exceptions to USAO prosecution for a penal statute in the nature of a police or municipal regulation, or otherwise. This change improves the enforceability and consistency of the revised statutes.

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[24] D.C. Code § 22-811(b)(3) ("Except as provided in paragraphs (2) [recidivist penalty enhancement], (4) [penalty enhancement for conduct that "results in" serious bodily injury] and (5) [penalty enhancement for conduct that "results in" death] of this subsection, a person convicted of violating subsection (a)(1)-(6) of this section shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 6 months, or both.").

[25] The current D.C. Code contributing to the delinquency of a minor statute states that "The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (a) of this section for which the penalty is set forth in subsection (c)(1) of this section." D.C. Code § 22-811(e). The reference to paragraph "(c)(1)" appears to be an error. There is no paragraph (c)(1) in the current statute and subsection (b) codifies the penalties. Per paragraph (b)(1), all violations of the current D.C. Code contributing to the delinquency of a minor statute, except contributing, causing, etc., a minor to commit a felony, have a maximum term of imprisonment of 6 months, provided that the enhanced penalties for prior convictions, serious bodily injury, or death do not apply. D.C. Code § 22-811(b)(1) ("Except as provided in paragraphs (2), (4) and (5) of this subsection, a person convicted of violating subsection (a)(1)-(6) of this section shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 6 months, or both.").

[26] *See* Testimony of Robert J. Spagnoletti, Attorney General for the District of Columbia, Committee on the Judiciary Report on Bill 16-247, the "Omnibus Public Safety Act of 2006" at 27 ("The District does not have a law that prohibits contributing to the delinquency of a minor.").

[27] *Id.* at 28-29 ("The misdemeanor offense would be prosecuted by OAG and the felony offense would be prosecuted by the USAO. The rationale for this bifurcated system of prosecution is based on the likelihood that OAG would be involved in the criminal and/or civil prosecution of most of the underlying offenses that would give rise to a misdemeanor violation of this Act, while the USAO is better situated to prosecute the felony violations.").

[28] *See, generally: In re Crawley*, 978 A.2d 608 (D.C. 2009); *In re Hall*, 31 A.3d 453, 456 (D.C. 2011); and *In re Settles*, 218 A.3d 235 (D.C. 2019).

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

First, the revised contributing to the delinquency of a minor statute no longer specifically or generally prohibits permitting or allowing a minor to engage in the prohibited conduct. The current D.C. Code contributing to the delinquency of a minor statute prohibits, in relevant part, "permit[ting]" or "allow[ing]" a minor to violate criminal laws or a court order, or be truant from school.[29] The plain language of the current D.C. Code statute allows criminal liability based upon a person's failure to act, even if the adult defendant does not have a legal duty to act. Imposing liability for an omission when there is no prior legal duty to act is generally disfavored.[30] The DCCA has not interpreted the scope of "permit" or "allow" in the current D.C. Code contributing to the delinquency of a minor statute.[31] However, in *Conley v. United States*, in holding unconstitutional the District's former statute criminalizing presence in a motor vehicle containing a firearm, the DCCA interpreted the U.S. Supreme Court's decision in *Lambert v. California*[32] to stand for the proposition that "it is incompatible with due process to convict a person of a crime based on the failure to take a legally required action—a crime of omission—if he had no reason to believe he had a legal duty to act, or even that his failure to act was blameworthy."[33] Resolving this ambiguity, the revised contributing to the delinquency of a minor statute no longer specifically or generally prohibits permitting or allowing a minor to engage in the prohibited conduct. Neither the current D.C. Code nor the RCC contributing to the delinquency of a minor statute requires that the adult defendant have a responsibility for the minor or a legal duty to act, and it is disproportionate to impose criminal liability for an omission. Depending on the facts of the case, an adult that has a responsibility under civil law for the health, welfare, or supervision of the minor may still have liability under the RCC criminal abuse of a minor statute (RCC § 22E-1501) or the RCC criminal neglect of a minor statute (RCC § 22E-1502) for failure to act or "permitting or allowing" the minor to engage in the conduct the revised contributing to the delinquency of a minor statute prohibits. This change improves the clarity, consistency, and proportionality of the revised statutes.

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[29] D.C. Code § 22-811(a), (a)(1), (a)(4), (a)(5), (a)(7) ("(a) It is unlawful for an adult, being 4 or more years older than a minor, to . . . permit, or allow the minor to: (1) Be truant from school; (4) Violate a court order; (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience; (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.").

[30] *See* the commentary to RCC § 22E-202(c), (d).

[31] In dicta in *Joya v. United States*, the DCCA noted that it "need not resolve" the scope of "permit" and "allow" in the contributing to the delinquency of a minor statute. *Joya v. United States*, 53 A.3d 309, 322 n. 28 (D.C. 2012). The issue in *Joya v. United States* was how collateral estoppel applied to a charge of contributing to the delinquency of a minor based upon a robbery for which appellant was acquitted. *Joya*, 53 A.3d at 311-12, 319-23. The government argued that a person could be found guilty under the contributing to the delinquency of a minor statute for "allow[ing]" or "permit[ting]" a minor to engage in felony criminal conduct. *Id.* at 322 n.28. Appellant argued that "allow" and "permit" "as used in the [contributing to the delinquency of a minor] statute suggest that there must be some type of special relationship between the defendant and the minor" and that "absent such an implicit requirement . . . the statute could effectively create an affirmative duty for innocent bystanders to prevent minors from committing crimes—something there is no evidence the legislature intended." *Id.* The DCCA stated "we need not resolve this issue now." *Id.*

[32] 355 U.S. 225 (1957).

[33] *Conley v. United States*, 79 A.3d 270, 273 (D.C. 2013).

Second, the revised contributing to the delinquency of a minor statute prohibits the same conduct as the general RCC solicitation statute (RCC § 22E-302), differing only in the required culpable mental state. The current D.C. Code contributing to the delinquency of a minor statute makes it unlawful to "invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor" to violate criminal laws or a court order, or be truant from school.[34] There is no DCCA case law interpreting this language and it is unclear whether "solicit" differs from other terms in the current statute, such as "invite," "recruit," "encourage," and "incite." There is no District case law interpreting the meaning of "solicit" in the current D.C. Code contributing to the delinquency of a minor statute. Resolving this ambiguity, the revised contributing to the delinquency of a minor statute prohibits the same conduct as the general RCC solicitation statute (RCC § 22E-302)—"commands, requests, or tries to persuade" the complainant "to engage in or aid the planning or commission of specific conduct, which, if carried out," will constitute a criminal offense, an attempt to commit a criminal offense, a violation of a court order, or constitute chronic truancy. As in the RCC solicitation statute, paragraph (a)(4) requires that the defendant act with the same culpability as required by the underlying criminal offense. With this change, the revised contributing to the delinquency of a minor statute uses language identical to the RCC solicitation statute (RCC § 22E-302), differing only in the required culpable mental state—the RCC contributing to the delinquency of a minor statute requires "knowingly" and the RCC solicitation statute requires "purposely." This change reduces unnecessary overlap and improves the clarity, consistency, and proportionality of the revised statute.

Third, the revised contributing to the delinquency of a minor statute prohibits the same conduct as the general RCC accomplice liability statute (RCC § 22E-210), differing only in the required culpable mental state. The current D.C. Code contributing to the delinquency of a minor statute makes it unlawful to "invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor" to violate criminal laws or a court order, or be truant from school.[35] There is no DCCA case law interpreting this language and it is unclear how the various types of prohibited conduct differ. Resolving this ambiguity, the revised contributing to the delinquency of a minor statute prohibits the same conduct as the general RCC accomplice liability statute (RCC § 22E-210)—"assists" the complainant "with the planning or commission of conduct" or "encourages" the complainant "to engage in specific conduct" that constitutes a violation of a criminal offense, the violation of a court order, or chronic truancy. As in the RCC accomplice liability statute, paragraph (a)(4) requires that the defendant act with the same culpability as required by the underlying criminal offense. With this change, the revised contributing to the delinquency of a minor statute uses language identical to the RCC accomplice liability statute (RCC § 22E-210), differing only in the required culpable mental state—the RCC contributing to the delinquency of a minor statute requires "knowingly" and the RCC solicitation statute requires "purposely." This change reduces unnecessary overlap and improves the clarity, consistency, and proportionality of the revised statute.

Fourth, the revised contributing to the delinquency of a minor statute no longer prohibits encouraging, causing, etc., a minor to possess or consume a trace amount of a controlled substance. The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits encouraging, causing, etc., a minor to "[p]ossess or consume . . . without a valid prescription, a

[34] D.C. Code § 22-811(a).
[35] D.C. Code § 22-811(a).

controlled substance as that term is defined in [D.C. Code] § 48-901.02(4)."[36] It is unclear whether this provision applies to any amount of a controlled substance or only a measurable amount and there is no DCCA case law on this issue.[37] Resolving this ambiguity, the revised contributing to the delinquency of a minor statute no longer includes possessing or consuming a controlled substance as a discrete form of liability. Instead, the revised contributing to the delinquency of a minor statute prohibits assisting, encouraging, or soliciting a minor to engage in conduct that constitutes a misdemeanor or a felony, which includes the RCC Possession of a Controlled Substance offense (RCC § 48-904.01a). The RCC possession offense, like the current D.C. Code possession offense, requires that a person possess a "measurable amount" of a controlled substance. Assisting, encouraging, or soliciting a minor to possess or consume a trace amount of a controlled substance is insufficient for liability under the RCC contributing to the delinquency of a minor statute, although an adult with a responsibility under civil law for the health, welfare, or supervision of a minor may still have liability under the RCC criminal abuse of a minor statute (RCC § 22E-1501) or RCC criminal neglect of a minor statute (RCC § 22E-1502) if the adult causes or creates a risk of specified physical or mental harm. This change improves the clarity, consistency, and proportionality of the revised statute.

Fifth, the revised contributing to the delinquency of a minor statute requires a "reckless" culpable mental state for the age of the complainant. The current D.C. Code contributing to the delinquency of a minor statute[38] does not specify any culpable mental states and there is no DCCA case law on this issue. Resolving this ambiguity, the revised contributing to the delinquency of a minor statute requires a "reckless" culpable mental state for the age of the complainant. Applying strict liability to statutory elements that distinguish innocent from criminal behavior is strongly disfavored by courts[39] and legal experts[40] for any non-regulatory crimes. Requiring, at a minimum, a knowing culpable mental state for the elements of an offense that make otherwise

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[36] D.C. Code § 22-811(a), (a)(2) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (2) Possess or consume . . . without a valid prescription, a controlled substance as that term is defined in§ 48-901.02(4).").

[37] Current D.C. Code § 48-904.01 prohibits knowingly or intentionally possessing a "controlled substance" without a valid prescription or order and grades the offense based on whether the controlled substance is phencyclidine in liquid form. D.C. Code § 48-904.01(d)(1), (d)(2). The statutory language of current D.C. Code § 48-904.01 does not require a "measurable amount" of a controlled substance, but DCCA case law interpreting the offense does. *Thomas v. United States*, 650 A.2d 183, 196 (D.C. 1994); *see also Price v. United States*, 746 A.2d 896 (D.C. 2000) (discussing means of proving that the defendant possessed a measurable quantity of a controlled substance). It is unclear whether the DCCA would similarly interpret the current D.C. Code contributing to the delinquency of a minor statute to require a "measurable amount" of a controlled substance.

[38] D.C. Code § 22-811.

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

[40] *See* § 5.5(c)Pros and cons of strict-liability crimes, 1 Subst. Crim. L. § 5.5(c) (3d ed.) ("For the most part, the commentators have been critical of strict-liability crimes. 'The consensus can be summarily stated: to punish conduct without reference to the actor's state of mind is both inefficacious and unjust. It is inefficacious because conduct unaccompanied by an awareness of the factors making it criminal does not mark the actor as one who needs to be subjected to punishment in order to deter him or others from behaving similarly in the future, nor does it single him out as a socially dangerous individual who needs to be incapacitated or reformed. It is unjust because the actor is subjected to the stigma of a criminal conviction without being morally blameworthy. Consequently, on either a preventive or retributive theory of criminal punishment, the criminal sanction is inappropriate in the absence of *mens rea.*'") (quoting Packer, Mens Rea and the Supreme Court, 1962 Sup.Ct.Rev. 107, 109).

legal conduct illegal is a generally accepted legal principle.[41] However, recklessness has been upheld in some cases as a minimal basis for punishing morally culpable crime.[42] A "reckless" culpable mental state in the revised contributing to the delinquency of a minor statute is consistent with the culpable mental state required for the age of the complainant in other RCC offenses pertaining to minors, such as criminal abuse of a minor (RCC § 22E-1501), criminal neglect of a minor (RCC § 22E-1502), and enticing a minor into sexual conduct (RCC § 22E-1305). This change improves the consistency and proportionality of the revised offense.

Sixth, the revised contributing to the delinquency of a minor statute, by the use of the phrase "in fact," requires strict liability for the age of the actor and the required four year age gap. The current D.C. Code contributing to the delinquency of a minor statute requires that the actor be at least 18 years of age and at least four years older than the complainant, but does not specify what culpable mental state, if any, applies to these elements.[43] There is no DCCA case law on these issues. Resolving these ambiguities, the revised contributing to the delinquency of a minor statute, by the use of the phrase "in fact," requires strict liability for the age of the actor and the required four year age gap. Requiring, at a minimum, a knowing culpable mental state for the elements of an offense that make otherwise legal conduct illegal is a generally accepted legal principle.[44] However, the revised contributing to the delinquency of a minor statute requires a culpable mental state of recklessness for the age of the minor complainant, and an actor may be held strictly liable for elements of an offense that aggravate what is already illegal conduct.[45] Strict liability for the age of the actor and the four year age gap is consistent with other RCC offenses that require this age for the actor and this age gap, such as third degree and sixth degree sexual abuse of a minor (RCC § 22E-1302), enticing a minor into sexual conduct (RCC § 22E-1305), and sexually suggestive conduct with a minor statute (RCC § 22E-1304). This change improves the consistency and proportionality of the revised offense.

Seventh, the revised contributing to the delinquency of a minor statute requires a "knowingly" culpable mental state for the fact that the planned or commissioned conduct constitutes "chronic truancy," as defined in paragraph (g)(2), or constitutes a violation of a court order. The current D.C. Code contributing to the delinquency of a minor statute prohibits, in relevant part, encouraging, causing, etc., a minor to violate a court order or be truant from school.[46] The statute does not specify any culpable mental states and it is unclear whether the actor must have subjective awareness that the planned or commissioned conduct will result in a violation of a court order or truancy. There is no DCCA case law on these issues. Resolving these ambiguities, the revised contributing to the delinquency of a minor statute requires a "knowingly" culpable

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[41] *Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015).

[42] *Elonis v. United States*, 135 S. Ct. 2001, 2015, 192 L.Ed.2d 1 (2015) (J. Alito, concurring) ("There can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct. In a wide variety of contexts, we have described reckless conduct as morally culpable.").

[43] D.C. Code § 22-811(a), (f)(1), (f)(2) (stating "It is unlawful for an adult, being 4 or more years older than a minor . . ." and defining "adult" as "a person 18 years of age or older at the time of the offense" and "minor" as "a person under 18 years of age at the time of the offense.").

[44] *Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015).

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

[46] D.C. Code § 22-811(a), (a)(1), (a)(4) ("(a) It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: (1) Be truant from school; (4) Violate a court order.").

mental state for the fact that the planned or commissioned conduct constitutes "chronic truancy," as defined in paragraph (g)(2), or a violation of a court order. Requiring, at a minimum, a knowing culpable mental state for the elements of an offense that make otherwise legal conduct illegal is a generally accepted legal principle.[47] Without a culpable mental state requirement, a defendant would be liable for causing, assisting, encouraging, or soliciting the complainant to engage in otherwise legal conduct that results in a violation of a court order or chronic truancy—for example, giving the complainant a ride home from school, unaware that the complainant should be going to court-ordered community service. Given the broad scope of otherwise legal conduct that can encourage or cause the violation of a court order or chronic truancy, the comparatively high culpable mental state of "knowingly" is proportionate. This change improves the clarity, consistency, and proportionality of the revised statute.

Eighth, the revised contributing to the delinquency of a minor statute, by use of the phrase "in fact," applies strict liability to the fact that the planned or commissioned conduct constitutes a District offense or a comparable offense in another jurisdiction. The current D.C. Code contributing to the delinquency of a minor statute prohibits, in relevant part, encouraging, causing, etc., a minor to violate a criminal offense in the District or elsewhere.[48] The statute does not specify any culpable mental states and it is unclear whether the actor must have subjective awareness that the planned or commissioned conduct will result in a crime. There is no DCCA case law on these issues. Resolving these ambiguities, the revised contributing to the delinquency of a minor statute, by use of the phrase "in fact," applies strict liability to the fact that the planned or commissioned conduct constitutes a District offense or a comparable offense in another jurisdiction. Requiring, at a minimum, a knowing culpable mental state for the elements of an offense that make otherwise legal conduct illegal is a generally accepted legal principle.[49] However, requiring that the defendant have subjective awareness of the fact that planned or commissioned conduct is a crime would allow a mistake of law to preclude liability for contributing to the delinquency of a minor, which is generally disfavored in the RCC and current District law.[50] Allowing a mistake of law to preclude liability is inconsistent with the other requirements in the RCC contributing to the delinquency of a minor statute—that the adult defendant "knowingly" assists, encourages, or commands, requests, or tries to persuade the minor complainant to engage in or plan to engage in conduct, and that the adult defendant must act with the culpability, if any, required for the underlying criminal offense. This change improves the clarity, consistency, and proportionality of the revised statutes.

Ninth, paragraph (f)(4) of the revised contributing to the delinquency of a minor statute specifically prohibits the merger of contributing to the delinquency of a minor with any other offense arising from the same course of conduct, but does allow for concurrent sentences. The current D.C. Code contributing to the delinquency of a minor statute states that "[t]he penalties under this section are in addition to any other penalties permitted by law."[51] It is unclear whether

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[47] *Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015).

[48] D.C. Code § 22-811(a), (a)(5), (a)(7) ("(a) It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience; (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.").

[49] *Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015).

[50] *See* Commentary to RCC § 22E-208.

[51] D.C. Code § 22-811(c).

the statutory language requires consecutive sentences for contributing to the delinquency of a minor and other offenses, or if concurrent sentences are permitted. There is no DCCA case law on this issue. Resolving this ambiguity, the revised contributing to the delinquency of a minor statute specifically prohibits the merger of contributing to the delinquency of a minor with any other offense arising from the same course of conduct, but does allow for concurrent sentences. This change improves the clarity, consistency, and proportionality of the revised statute.

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

First, the revised contributing to the delinquency of a minor statute does not use the terms "adult" or "minor." The current D.C. Code contributing to the delinquency of a minor statute defines an "adult" as "a person 18 years of age or older at the time of the offense"[52] and a "minor" as "a person under 18 years of age at the time of the offense."[53] The revised contributing to the delinquency of a minor statute codifies these requirements directly into the offense as elements—the actor must be at least 18 years of age and the complainant must be under the age of 18 years—and separate terms and definitions are unnecessary. In addition, the revised contributing to the delinquency of a minor statute deletes as surplusage the "at the time of the offense" requirement in the definitions of "adult" and "minor" in the current D.C. Code contributing to the delinquency of a minor statute. This change improves the clarity of the revised statute.

Second, the revised contributing to the delinquency of a minor statute no longer includes as a discrete basis of liability encouraging or causing a minor to join a criminal street gang. The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits encouraging or causing a minor to "[j]oin a criminal street gang as that term is defined in [D.C. Code] § 22-951(e)."[54] This provision overlaps with the current D.C. Code contributing to the delinquency of a minor statute prohibition on encouraging or causing a minor to commit a misdemeanor.[55] The RCC contributing to the delinquency of a minor statute prohibits assisting, encouraging, or soliciting a minor complainant to engage in conduct that constitutes a misdemeanor. It is unnecessary to codify a provision in the revised statute that is specific to encouraging or causing[56] a minor to join a criminal street gang because that conduct will violate

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[52] D.C. Code § 22-811(f)(1).

[53] D.C. Code § 22-811(f)(2).

[54] D.C. Code § 22-811(a), (a)(6) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate . . . the minor to: . . . (6) Join a criminal street gang as that term is defined in § 22-951(e)(1).").

[55] Under current D.C. Code § 22-951, causing a person to join a criminal street gang is a misdemeanor with a maximum term of imprisonment of 6 months. D.C. Code § 22-951(a)(1), (a)(2) ("(a)(1) It is unlawful for a person to solicit, invite, recruit, encourage, or otherwise cause, or attempt to cause, another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang. (2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 6 months, or both.").

Encouraging or causing a minor to join a criminal street gang violates D.C. Code § 22-951, which, in turn, violates the prohibition in the current D.C. Code contributing to the delinquency of a minor statute on encouraging or causing a minor complainant to commit a misdemeanor. *See* D.C. Code § 22-811(a), (a)(5) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate . . . the minor to: . . . (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience.").

[56] The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits "permit[ting]" or "allow[ing]" a minor to join a criminal street gang. D.C. Code §§ 22-811(a), (a)(6). As is discussed elsewhere in this commentary as a possible change to current District law, the revised contributing to the delinquency of a minor statute

the District's current criminal street gang statute, which is a misdemeanor offense.[57] This change improves the clarity of the revised statutes.

Third, the revised contributing to the delinquency of a minor statute no longer includes as a discrete basis of liability encouraging or causing a minor to possess or consume alcohol. The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits encouraging or causing a minor complainant to "[p]ossess or consume alcohol."[58] The revised contributing to the delinquency of a minor statute prohibits assisting, encouraging, or soliciting a minor complainant to engage in conduct that constitutes a District "offense," which includes the underage possession of alcohol law in current D.C. Code § 25-1002.[59] It is unnecessary to codify in the revised statute a provision that is specific to encouraging or causing a minor to possess or consume alcohol.[60] This change improves the clarity of the revised statutes.

Fourth, the revised contributing to the delinquency of a minor statute no longer includes as a discrete basis of liability encouraging or causing a minor to possess or consume a "measurable amount" of a controlled substance without a valid prescription. The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits encouraging or causing a minor to "[p]ossess or consume . . . without a valid prescription, a controlled substance as that term is defined in [D.C. Code] § 48-901.02(4).[61] As is discussed elsewhere in this commentary as a possible change to current District law, it is unclear whether this provision applies to any amount of a controlled substance or only a "measurable amount." To the extent that this provision applies

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does not include "permitting" or "allowing" any of the prohibited conduct, although there may be liability under the RCC criminal abuse of a minor (RCC § 22E-1501) or RCC criminal neglect of a minor (RCC § 22E-1502) statutes for an adult that is responsible under civil law for the health, welfare, or supervision of the minor. To the extent that the current D.C. Code contributing to the delinquency of a minor statute prohibits "permit[ting]" or "allow[ing]" a minor to join a criminal street gang, the revised contributing to the delinquency of a minor statute does not.

[57] D.C. Code § 22-951(a)(1), (a)(2) ("(a)(1) It is unlawful for a person to solicit, invite, recruit, encourage, or otherwise cause, or attempt to cause, another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang. (2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 6 months, or both.").

[58] D.C. Code § 22-811(a), (a)(2) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate . . . the minor to: . . . (2) Possess or consume alcohol . . . .").

[59] Current D.C. Code § 25-1002 prohibits a person under 21 years of age from "purchas[ing], attempt[ing] to purchase, possess[ing], or drink[ing] an alcoholic beverage in the District, except as provided under subchapter IX of Chapter 7." D.C. Code § 22-1002(a). A violation of current D.C. Code § 25-1002 is a "misdemeanor," although the statute also states that "No person under the age of 21 shall be criminally charged with the offense of possession or drinking an alcoholic beverage under this section, but shall be subject to civil penalties under subsection (e) of this section." D.C. Code § 25-1002(a), (c)(4)(D). Although a minor is not subject to criminal prosecution, a violation of current D.C. Code § 25-1002(a) is still an "offense," and the RCC contributing to the delinquency of a minor statute treats it as such. Assisting, encouraging, or soliciting a minor complainant to engage in conduct that violates current D.C. Code § 25-1002(a) is sufficient for liability under the RCC contributing to the delinquency of a minor statute.

[60] The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits "permit[ting]" or "allow[ing]" a minor to possess or consume alcohol. D.C. Code § 22-811(a), (a)(2). As is discussed elsewhere in this commentary as a possible change to current District law, the revised contributing to the delinquency of a minor statute does not include "permitting" or "allowing" any of the prohibited conduct, although there may be liability under the RCC criminal abuse of a minor (RCC § 22E-1501) or RCC criminal neglect of a minor (RCC § 22E-1502) statutes for an adult that is responsible under civil law for the health, welfare, or supervision of the minor. To the extent that the current D.C. Code contributing to the delinquency of a minor statute prohibits "permit[ting]" or "allow[ing]" a minor to possess or consume alcohol, the revised contributing to the delinquency of a minor statute does not.

[61] D.C. Code § 22-811(a), (a)(2) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate . . . the minor to: . . . (2) Possess or consume . . . without a valid prescription, a controlled substance as that term is defined in§ 48-901.02(4).").

to a "measurable amount," it overlaps with the current D.C. Code contributing to the delinquency of a minor statute prohibition on encouraging or causing a minor to commit a misdemeanor or felony.[62] The RCC contributing to the delinquency of a minor statute prohibits assisting, encouraging, or soliciting a minor to engage in conduct that constitutes a District offense, including the RCC possession of a controlled substance offense (RCC § 48-904.01a), and it is unnecessary to codify a provision that is specific to encouraging or causing a minor to possess or consume a controlled substance.[63] This change improves the clarity of the revised statutes.

Fifth, the revised contributing to the delinquency of a minor statute does not codify a separate provision stating that "it is not a defense" that the minor complainant does not engage in the prohibited conduct or is not charged with, adjudicated delinquent for, or convicted of an offense. Subsection (d) of the current D.C. Code contributing to the delinquency of a minor statute states that "It is not a defense to a prosecution under this section that the minor does not engage in, is not charged with, is not adjudicated delinquent for, or is not convicted as an adult, for" any of the prohibited conduct.[64] Instead, subsection (d) of the revised contributing to the delinquency of a minor statute states that an actor "may be convicted of contributing to the delinquency of a minor upon proof of the commission of the offense" in several situations such as, for example, when the complainant has not been subject to delinquency proceedings. Subsection (d) of the revised statute is consistent with a provision in the general RCC accomplice liability statute (RCC § 22E-210). Subsection (d) of the revised statute specifically includes the situations in subsection

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[62] Current D.C. Code § 48-904.01 prohibits knowingly or intentionally possessing a controlled substance without a valid prescription or order and grades the offense based on whether the controlled substance is phencyclidine in liquid form. D.C. Code § 48-904.01(d)(1), (d)(2) ("It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter or Chapter 16B of Title 7, and provided in § 48-1201. Except as provided in paragraph (2) of this subsection, any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than the amount set forth in § 22-3571.01, or both. (2) Any person who violates this subsection by knowingly or intentionally possessing the abusive drug phencyclidine in liquid form is guilty of a felony and, upon conviction, may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both."). The statutory language of current D.C. Code § 48-904.01 does not require a "measurable amount" of a controlled substance, but DCCA case law interpreting the offense does. *Thomas v. United States*, 650 A.2d 183, 196 (D.C. 1994); see also *Price v. United States*, 746 A.2d 896 (D.C. 2000) (discussing means of proving that the defendant possessed a measurable quantity of a controlled substance).

Encouraging or causing a minor to possess or consume a measurable amount of a controlled substance without a valid prescription violates D.C. Code § 48-904.01, which, in turn, violates the prohibition in the current D.C. Code contributing to the delinquency of a minor statute on encouraging or causing a minor complainant to commit a misdemeanor or a felony. *See* D.C. Code § 22-811(a), (a)(5), (a)(7) ("It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate . . . the minor to: . . . (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience. . . . (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony . . . .").

[63] The current D.C. Code contributing to the delinquency of a minor statute specifically prohibits "permit[ting]" or "allow[ing]" a minor to possess or consume a controlled substance without a valid prescription. D.C. Code §§ 22-811(a), (a)(2). As is discussed elsewhere in this commentary as a possible change to current District law, the revised contributing statute does not include "permitting" or "allowing" any of the prohibited conduct, although there may be liability under the RCC criminal abuse of a minor (RCC § 22E-1501) or RCC criminal neglect of a minor (RCC § 22E-1502) statutes for an adult that is responsible under civil law for the health, welfare, or supervision of the minor. To the extent that the current D.C. Code contributing to the delinquency of a minor statute prohibits "permit[ting]" or "allow[ing]" a minor to possess or consume a controlled substance without a valid prescription, the revised contributing to the delinquency of a minor statute does not.

[64] D.C. Code § 22-811(d).

(d) of the current D.C. Code contributing to the delinquency of a minor statute, with the exception of the minor "does not engage in" the prohibited conduct.[65] This language is surplusage given the requirements of the revised statute (assisting, encouraging, commanding, causing, etc., the complainant) and deleting it is not intended to change current District law. This change improves the clarity of the revised statute.

Sixth, the revised statute codifies an exclusion from liability for an act of civil disobedience and, by use of the phrase "in fact," applies strict liability to this element. The current D.C. Code contributing to the delinquency of a minor statute prohibits encouraging, causing, etc., a minor to "violate" certain criminal laws "except for acts of civil disobedience"[66] and does not specify what culpable mental state, if any, applies to this element. The revised statute makes it an exclusion from liability "when, in fact, the conduct constituting a District offense or a comparable offense in another jurisdiction, constitutes an act of civil disobedience." This change improves the clarity of the revised statute.

[65] D.C. Code § 22-811(d).

[66] D.C. Code § 22-811(a), (a)(5), (a)(7) ("(a) It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience; (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.").