



## Report # 81

# Public Corruption Offenses

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## Report #81—Public Corruption Offenses

This Report contains draft revisions to certain District criminal statutes. These draft revisions are part of the D.C. Criminal Code Reform Commission's (CCRC) efforts to issue recommendations for comprehensive reform of District criminal statutes.

This Report has two main parts: (1) draft statutory text for inclusion in the Revised Criminal Code; and (2) commentary on the draft statutory text.

The Report's commentary explains the meaning of each provision, considers whether existing District law would be changed by the provision (and if so, why this change is being recommended), and may address the provision's relationship to code reforms in other jurisdictions, as well as recommendations by the American Law Institute and other experts.

Appendices to this report are:

- Appendix A – Black Letter Text of Draft Revised Statutes. (No commentary.)

A copy of this document and other work by the CCRC is available on the agency website at [www.ccrdc.dc.gov](http://www.ccrdc.dc.gov).

**Report #81 – Public Corruption Offenses**

**Draft RCC Text and Commentary**

Corresponding D.C. Code statutes in {}

- § 22A-101. Generally applicable definitions.
  - “Official act”
  - “Official duty”
  - “Personal benefit”
  - “Personal pecuniary benefit”
  - “Public servant”
- § 22A-4101. Bribery of a public servant. {D.C. Code §§ 22-704, 22-711, 22-712}
- § 22A-4102. Solicitation or acceptance of bribe by a public servant. {D.C. Code §§ 22-704, 22-711, 22-712}
- § 22A-4103. Unlawful compensation or gratuity to a public servant. {New offense}
- § 22A-4104. Solicitation or acceptance of unlawful compensation or gratuity by a public servant. {New offense}
- § 22A-4105. Misuse of official information. {New offense}

**§ 22A-101. Definitions.**

**“Official act” means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of a public servant.**

*Explanatory Note.* The revised term “official act” replaces the term “official action” in D.C. Code § 22-711(3). The revised term “official act” is used in the revised offenses of bribery of a public servant,<sup>1</sup> solicitation or acceptance of a bribe by a public servant,<sup>2</sup> unlawful compensation or gratuity to a public servant,<sup>3</sup> and solicitation or acceptance of unlawful compensation or gratuity by a public servant.<sup>4</sup>

*Relation to current District Law.* The revised term “official act” replaces the term “official action” in D.C. Code § 22-711(3). The revised definition of “official act” is identical to the current definition of “official action” and does not substantively change District law.

**“Official duty” means any action a public servant is required to perform or refrain from that does not involve an exercise of discretion on the part of the public servant.**

*Explanatory Note.* The revised term “official duty” replaces the term “official duty” in D.C. Code § 22-711(4). The revised term “official duty” is used in the revised offenses of bribery of a public servant,<sup>5</sup> solicitation or acceptance of a bribe by a public servant,<sup>6</sup> unlawful compensation or gratuity to a public servant,<sup>7</sup> and solicitation or acceptance of unlawful compensation or gratuity by a public servant.<sup>8</sup>

*Relation to current District Law.* As applied in the public corruption offenses the term “official duty” may substantively change current District law in one main way.

The revised definition of “official duty” specifies that official duties include both actions that a public servant is required to perform and refrain from performing. Current D.C. Code § 22-711(4) defines “official duty” as “any required conduct that does not involve an exercise of discretion on the part of the public servant” but does not specify whether covered conduct includes both taking and failing to refrain from certain actions. To resolve any ambiguity and ensure that failure to refrain from certain conduct is covered, the revised “official duty” definition specifies that “official duties” encompass actions that

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<sup>1</sup> § 22A-4101.

<sup>2</sup> § 22A-4102.

<sup>3</sup> § 22A-4103.

<sup>4</sup> § 22A-4104.

<sup>5</sup> § 22A-4101.

<sup>6</sup> § 22A-4102.

<sup>7</sup> § 22A-4103.

<sup>8</sup> § 22A-4104.

public servants are required to refrain from doing.<sup>9</sup> This change clarifies District law and may close a potential gap in liability.

**“Personal benefit” means any gain or advantage to the beneficiary personally, including a gain or advantage to any person or entity in whose welfare the beneficiary has a significant personal interest.**

*Explanatory Note.* The revised term “personal benefit” is a new term used in lieu of “anything of value” in the current bribery statute, D.C. Code § 22-712. The term also replaces the phrase “any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value” in the current corrupt influence statute, D.C. Code § 22-704. The term “personal benefit” is used in the revised offenses of bribery of a public servant<sup>10</sup> and solicitation or acceptance of a bribe by a public servant.<sup>11</sup> The term “personal benefit” is also used in the definition of “personal pecuniary benefit” and thereby incorporated into the unlawful compensation or gratuity to a public servant,<sup>12</sup> solicitation or acceptance of unlawful compensation or gratuity by public servant,<sup>13</sup> and misuse of official information<sup>14</sup> offenses. Under the revised definition, “personal benefit” extends to benefits to third parties when the beneficiary has a significant personal interest in their welfare.<sup>15</sup>

*Relation to current District Law.* The revised definition of “personal benefit” is new and does not itself substantively change District law.

**“Personal pecuniary benefit” means any personal benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain or advantage.**

*Explanatory Note.* The revised term “personal pecuniary benefit” is a new term, the term is not currently defined in Title 22 of District Code. The term is used in RCC

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<sup>9</sup> For example, a custodian of records may be required to disclose certain documents upon request but be prohibited from disclosing other documents. In that case, both the disclosure of certain documents upon request and the non-disclosure of the other documents would constitute “official duties.”

<sup>10</sup> § 22A-4101.

<sup>11</sup> § 22A-4102.

<sup>12</sup> § 22A-4103.

<sup>13</sup> § 22A-4104.

<sup>14</sup> § 22A-4105.

<sup>15</sup> *E.g.*, an actor would likely have a significant personal interest in the welfare of their child. If a business seeking a lucrative city contract offered to provide the child of the public servant awarding the contract a lucrative business deal, the business deal would constitute a personal benefit even though it was given to the child not the public servant. In contrast, a passing interest in a third party would not create a significant personal interest. *E.g.*, a public servant is a fan of professional sports team contemplating relocating out of the city. The public servant’s casual support for the team would not constitute a significant personal interest under the revised definition. Thus, if the public servant works with other businesses to offer the team incentives to remain in the city, the incentives provided to the team by other businesses would not constitute personal benefits to the public servant.

offenses of unlawful compensation or gratuity to a public servant,<sup>16</sup> solicitation or acceptance of unlawful compensation or gratuity by a public servant,<sup>17</sup> and misuse of official information.<sup>18</sup> The revised term “personal benefit”, as defined in § 22A-101, is incorporated within the definition of “personal pecuniary benefit.” The use of the phrase “economic gain or advantage” indicates that the term encompasses both pecuniary profit and the avoidance of pecuniary loss.<sup>19</sup>

***Relation to current District law.*** The revised definition of “pecuniary benefit” is new and does not itself substantially change District law.

**“Public servant” means:**

- (A) Any officer, employee, or other person who performs a function of the District government;**
- (B) Any person, other than a witness, who performs a function of a court of the District of Columbia including jurors and court-appointed neutrals; or**
- (C) Any person elected, nominated for appointment, or appointed to be a public servant under paragraphs (A) or (B).**

***Explanatory Note.*** The revised term “public servant” replaces the term “public servant” in D.C. Code § 22-711(6). The revised term “public servant” is used in the revised offenses of bribery of a public servant,<sup>20</sup> solicitation or acceptance of a bribe by a public servant,<sup>21</sup> unlawful compensation or gratuity to a public servant,<sup>22</sup> solicitation or acceptance of unlawful compensation or gratuity by a public servant,<sup>23</sup> and misuse of official information.<sup>24</sup>

***Relation to current District Law.*** *The revised definition of “public servant” may change District law in three main ways.*

First, the revised definition of “public servant” eliminates the categorical exclusion of independent contractors from the definition. The current definition of “public servant” in D.C. Code § 22-711(6) expressly states that the term public servant does not include independent contractors. There is no statutory definition of “independent contractor” and there is no case law on point. Nevertheless, some legislative history suggests that some

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<sup>16</sup> § 22A-4103.

<sup>17</sup> § 22A-4104.

<sup>18</sup> § 22A-4105.

<sup>19</sup> For example, a public servant buys a property for \$500,000. Market conditions change and the property value drops to \$300,000. Person A buys the property for \$400,000 from the public servant in exchange for an agreement that the public servant will perform an official act to benefit Person A. Although the public servant did not profit from the sale of the property, they avoided a significant loss and therefore obtained an economic advantage they would not have had if they sold it for market price rather than in exchange for an official act.

<sup>20</sup> § 22A-4101.

<sup>21</sup> § 22A-4102.

<sup>22</sup> § 22A-4103.

<sup>23</sup> § 22A-4104.

<sup>24</sup> § 22A-4105.

independent contractors were meant to be covered by the bribery statute if they were under District control despite the express textual exclusion of independent contractors from the definition of “public servant.”<sup>25</sup> To resolve any ambiguity, the revised definition of a public servant statute does not expressly include or exclude “independent contractors.” Rather, the revised definition of public servant includes any persons, independent contractors or otherwise, in a position to perform a function of the District government or a court of the District of Columbia, as well as persons elected, nominated, or appointed to be in such positions. Independent contractors who do not perform such functions are naturally excluded by this definition. By relying on the requirement that a public servant perform a function of the District government or a function of the District of Columbia Courts, the revised definition of public servant avoids confusion regarding whether a person generally deemed an independent contractor but performing a function of the government or a court is covered by the statute. This change closes a potential gap in liability and improves the overall clarity and consistency of District law.

Second, the revised definition of “public servant” expressly includes court-appointed neutrals in the definition. The current definition of “public servant” in D.C. Code § 22-711(6) specifically includes jurors but does not expressly include court-appointed neutrals such as special masters and auditors. Arguably, court-appointed neutrals act for the judicial branch of District government. However, it is not clear whether court-appointed neutrals are covered under the current definition of “public servant” and there is no case law on point. Resolving this ambiguity, the revised definition of “public servant” expressly includes court-appointed neutrals to ensure that third-party neutrals appointed by the court to perform a function for the court are covered by the definition.<sup>26</sup> This change improves the clarity of District law.

Third, the revised definition of “public servant” clarifies that the term “nominate” within the definition does not refer to nominations of candidates for public office. The current definition of “public servant” in D.C. Code § 22-711(6) includes persons “elected, nominated or appointed” to be a public servant. It is not clear whether the term “nominated” includes candidates nominated to run for public office in the electoral process or is limited to persons nominated for appointment to official positions. There is no case law on point. To resolve this ambiguity, the revised definition uses the phrase “for appointment” to clarify that candidates for public office are not included in the definition of “public servant” by virtue of being nominated by a party to run for office. Candidates for public office are still encompassed in public corruption statutes that expressly provide for applicability to candidates. This change improves the clarity, consistency, and proportionality of District law.

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<sup>25</sup> Judiciary Committee, Report on Bill No. 4-193, the D.C. Theft and White Collar Crime Act of 1982, at 79 (“The question of whether a person is an independent contractor in the context of the bribery provision turns on the actual control exercised by the District of Columbia government over the contractor. Anyone who was actually under the control of the District government would not be an independent contractor.”).

<sup>26</sup> The RCC distinguishes between bribery in public and private matters. Thus, neutrals in wholly private matters will be covered under two new offenses, bribery of a private neutral or independent official and solicitation of a bribe by a private neutral or independent official, proposed in a separate or forthcoming report.

**§ 22A-4101. Bribery of a public servant.**

- (a) *Offense.* An actor commits bribery of a public servant when the actor:
- (1) Knowingly offers, gives, or agrees to give any personal benefit, directly or indirectly, to a public servant or candidate for elective office;
  - (2) With intent that the personal benefit be in exchange for an agreement or understanding that the public servant or candidate for elective office will:
    - (A) Perform an official act;
    - (B) Fail to perform an official duty; or
    - (C) Violate a law relating to the public servant's office or employment in a manner that substantially threatens the public trust.
- (b) *Exclusions.* An actor does not commit an offense under this section when the personal benefit is, in fact:
- (1) An advantage promised generally to a group or class of voters as a consequence of public measures which a public servant or candidate engages to support or oppose;
  - (2) Salary, fees, or other compensation authorized by law;
  - (3) A campaign contribution that is not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(2)(A)-(a)(2)(C); or
  - (4) Concurrence in official action in the course of legitimate compromise among public servants.
- (c) *Penalty.*
- (1) Bribery of a public servant is a Class 7 felony.
  - (2) *Merger.* A conviction for bribery of a public servant shall merge with a conviction for unlawful compensation or gratuity to a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (d) *Definitions.* In this section, the term:
- (1) "Candidate" has the same meaning specified in D.C. Code § 1-1161.01(6); and
  - (2) "Law relating to a public servant's office or employment" means any District law that specifically applies to the public servant in their official role and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

***Explanatory Note.*** *The revised bribery of a public servant statute prohibits bribing or attempting to bribe a public servant by offering, giving, or agreeing to give the public servant any personal benefit in exchange for an agreement or understanding that the public servant will engage in certain conduct related to official acts, official duties, or laws relating to the public servant's office or employment that implicate public trust. There are no penalty gradations and convictions for bribery of a public servant merge with*

*convictions for unlawful compensation or gratuity to a public servant when arising from the same act or course of conduct. The revised offense, in conjunction with a new solicitation or acceptance of a bribe by a public servant offense<sup>27</sup>, consolidates and replaces the District’s current and overlapping bribery statutes in D.C. Code § 22-712 (bribery) and D.C. Code § 22-704 (corrupt influence).*

Subsection (a) specifies the prohibited conduct for the bribery of a public servant offense. Paragraph (a)(1) requires that an actor “knowingly offer, give, or agree to give any personal benefit directly, or indirectly, to a public servant or candidate for elective office.” “Knowingly” is defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements in (a)(1). Here, the knowingly culpable mental state means the actor must know or be practically certain that they are: (1) offering, giving, or agreeing to give, (2) a personal benefit, (3) to a public servant or candidate for elective office. “Personal benefit”<sup>28</sup> and “public servant”<sup>29</sup> are defined terms in § 22A-101. The term “personal benefit” encompasses benefits to third persons or entities when the beneficiary has a significant personal interest in the welfare of the third person or entity.<sup>30</sup> “Candidate” is a defined term with the same meaning specified in D.C. Code § 1-1161.06(6).<sup>31</sup>

Paragraph (a)(2) specifies that the actor must offer, give, or agree to give any personal benefit to a public servant or candidate for elective office with intent that the personal benefit be in exchange for an agreement or understanding that the public servant or candidate for elective office will engage in any conduct specified in subparagraphs

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<sup>27</sup> § 22A-4102.

<sup>28</sup> “Personal benefit” means any gain or advantage to the beneficiary personally, including a gain or advantage to any person or entity in whose welfare the beneficiary has a significant personal interest.

<sup>29</sup> “Public servant” means: (A) Any officer, employee, or other person who performs a function of the District government including jurors; (B) Any person, other than a witness, who performs a function of a court of the District of Columbia; or (C) Any person elected, nominated for appointment, or appointed to be a public servant.

<sup>30</sup> For example, a parent may have a significant interest in the welfare of their child. If an actor offered to invest in the company belonging to the child of a public servant, the investment would likely constitute a personal benefit to the public servant even though the public servant did not directly obtain a gain or advantage. In contrast, if an actor offered to invest in local businesses in the public servant’s neighborhood, the general benefit to the neighborhood and local businesses would not constitute a personal benefit unless the public servant had a significant personal interest in one of the local businesses. Likewise, merely incidental benefits stemming from investment in the businesses in the public servant’s neighborhood would not constitute the type of personal benefits covered by the revised statute.

<sup>31</sup> “Candidate” means an individual who seeks election to public office, whether or not the individual is nominated or elected. An individual deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual: (A) Obtained or authorized any other person to obtain nominating petitions to qualify the individual for election to public office; (B) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about the individual’s election to public office; or (C) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed to be a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek election to public office. D.C. Code § 1-1161.06(6).

(a)(2)(A)-(a)(2)(C). The words “offer” and “agree” clarify that bribery of a public servant does not require that the actor actually provided a personal benefit. Merely offering to provide a personal benefit satisfies the element under (a)(2) even if the public servant or candidate for elective office refuses to accept the benefit. The word “agree” clarifies that the actor need not actually provide the personal benefit or instigate the transaction. For example, if a public official or candidate requests that an actor provide a personal benefit, if the actor agrees to do so then the element under (a)(2) is satisfied even if the actor does not actually provide the personal benefit. This paragraph establishes the *quid pro quo* intent requirement of the offense.<sup>32</sup> “Intent” is a defined term in § 22A-206 that here means the actor was practically certain that the personal benefit was being given, offered, or agreed to in exchange for an agreement or understanding that the public servant or candidate for elective office would engage in any of the conduct specified in (a)(2)(A)-(a)(2)(C). Per § 22A-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. Thus, it is not necessary to prove the public servant or candidate for elective office actually accepted or agreed to accept the personal benefit as a *quid pro quo* for engaging in the conduct described in subparagraphs (a)(2)(A)-(a)(2)(C). Likewise, it is not necessary to prove that the public servant actually performed an official act, failed to perform an official duty, or violated a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust. Rather, the government need only show that the actor was practically certain that they were offering, giving, or agreeing to give a personal benefit in exchange an agreement or understanding that the public servant would engage in conduct specified in subparagraphs (a)(2)(A)-(a)(2)(C).

Subparagraphs (a)(2)(A)-(a)(2)(C) provide the three alternative subjects of the agreement or understanding with the public servant. Subparagraph (a)(2)(A) specifies the performance of an “official act.” Subparagraph (a)(2)(B) specifies the failure to perform an “official duty”. And subparagraph (a)(2)(C) specifies the violation of a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust.<sup>33</sup> Per § 22A-205, the object of the phrase “with intent to” paragraph (a)(2) is

<sup>32</sup> See *United States v. Silver*, 948 F.3d 538, 554 (2d Cir. 2020)(explaining in the federal context that “bribery’s *quid pro quo* requirement serves the same function as does the nexus requirement for illegal gratuities: avoiding the ‘peculiar result[ ]’ that, without requiring a *quid pro quo*, federal law might unconstitutionally criminalize ‘any effort to buy favor or generalized goodwill from an official who either has been, is, or may at some unknown, unspecified later time, be in a position to act favorably to the giver’s interests’”) (citing *United States v. Sun-Diamond Growers*, 526 U.S. 398, 405–06 (1999)).

<sup>33</sup> The various codes of conduct referenced in D.C. Code § 1-1161.01(7) constitute laws governing District officials and employees. Some violations of those laws substantially threaten the public trust while others do not. To fall within the revised statute, the violation of a law pertaining to a public servant’s office of employment must be done in a manner that substantially threatens the public trust and not a mere technical violation. *E.g.*, the Council Code of Conduct requires employees to obtain the approval of his or her employer before engaging in outside employment. The mere failure of a public servant to obtain supervisor approval for a job unrelated to the public servant’s government work, though a violation of the code of conduct, is generally not the type of violation done in a manner that substantially threatens public trust. In contrast, violations of rules pertaining to conflicts of interest, use of government resources, and disclosure of

not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. Thus, it is not necessary to prove the public servant or candidate for elective office actually reached an agreement or understanding with the actor or engaged in any of the types of conduct described in subparagraphs (a)(2)(A)-(a)(2)(C). It is sufficient to establish that the actor intended for the personal benefit to be in exchange for an agreement or understanding that the public servant or candidate for elective office would engage in such conduct. “Official act”<sup>34</sup> and “official duty”<sup>35</sup> are defined terms in § 22A-101. “Law relating to the public servant’s office or employment” is a defined term in subsection (d) of the offense.<sup>36</sup> By definition, only public servants can perform an “official act,” fail to perform an “official duty,” or violate a “law relating to the public servant’s office or employment in a manner that substantially threatens the public trust.” Thus, in cases where the actor offering or giving a benefit to a “candidate” for elective office who is not yet a “public servant”, the intent must be for the personal benefit to be in exchange for an agreement or understanding that the candidate will engage in the specified conduct after the candidate becomes a public servant. Nonetheless, per the rule in §22A-205, it is not required that the candidate ever become a public servant, only that the actor gave, offered, or agreed to give a personal benefit to the candidate practically certain that it was in exchange for an agreement or understanding about conduct the candidate would engage in after assuming office if the candidate assumed office.

Subsection (b) establishes four exclusions from liability for conduct that otherwise falls under subsection (a). First, paragraph (b)(1) excludes from liability offering, giving, or agreeing to give a personal benefit that is an advantage promised generally to a group or class of voters as a consequence of public measures which a public servant or candidate engages to support or oppose.<sup>37</sup> Paragraph (b)(2) excludes from liability offering, giving, or agreeing to give a personal benefit that constitutes salary, fees, or other compensation authorized by law. Paragraph (b)(3) excludes from liability campaign contributions that are

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confidential information are much more likely to be done in a manner that substantially threatens the public trust.

<sup>34</sup> “Official act” means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of a public servant.

<sup>35</sup> “Official duty” means any action a public servant is required to perform or refrain from that does not involve an exercise of discretion on the part of the public servant.

<sup>36</sup> Examples of laws under the definition include the various codes of conduct referenced in D.C. Code § 1-1161.01(7).

<sup>37</sup> *E.g.*, A professional soccer team is seeking tax subsidies to build a stadium in the District. Residents are concerned about potential traffic and parking problems in the neighborhood on game days. The soccer team offers to provide free shuttle service to the stadium and build additional parking lots within a mile of the stadium to help with traffic and parking if Councilmember X votes for the tax subsidies. Councilmember X is one of the soccer team’s season ticket holders and would benefit from both the free shuttle service and parking on game days. Accordingly, the offer to provide free shuttle service and build additional parking lots would seemingly confer a personal benefit to Councilmember X that is offered with intent to establish an agreement that Councilmember X will perform an official act and vote for the subsidies. However, because the benefit of free shuttle service and parking is available to the public generally and part of a public measure Councilmember X is supporting, the offer of this benefit would not be prohibited by the bribery of a public servant statute. If, on the other hand, the soccer team offered Councilmember X a personal parking and shuttle benefit only available to Councilmember X, the team’s offer would not fall within the exclusion.

not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in subparagraphs (a)(2)(A)-(a)(2)(C).<sup>38</sup> Finally, paragraph (b)(4) excludes from liability offering, giving, or agreeing to give a personal benefit that constitutes concurrence in official action in the course of legitimate compromise among public servants.<sup>39</sup>

Subsection (c) specifies the penalty classification for bribery of a public servant and establishes a merger provision. Paragraph (c)(1) establishes that bribery of a public servant is a class 7 felony. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.] Paragraph (c)(2) states that a conviction for bribery of a public servant shall merge with a conviction for unlawful compensation or gratuity to a public servant when the offenses arise out of the same act or course of conduct. Paragraph (c)(2) also provides that the rules of priority in RCC § 22A-214 govern the merger.

Subsection (d) defines the term “candidate” by cross-referencing another section in District code<sup>40</sup> and defines the term “law relating to a public servant's office or employment” for the offense. The term “law relating to a public servant's office or employment” means any District law that specifically applies to the public servant in their official role and that directly or indirectly: (A) imposes a duty on the public servant; or (B) governs the conduct of the public servant.

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<sup>38</sup> *E.g.*, Councilmember A is a strong supporter of electric vehicle infrastructure. Person B owns a car dealership that sells electric vehicles and wants to see persons who support electric vehicle infrastructure elected. Person B provides Councilmember A with a large campaign contribution due to Councilmember A's support of electric vehicle infrastructure but does not seek an agreement or understanding that Councilmember A will perform any official acts because of the campaign contribution. Because the campaign contribution was not made, or intended to be made, in exchange for a clear and unambiguous promise that Councilmember A engage in any particular conduct, the campaign contribution would not run afoul of the revised bribery of a public servant statute, even though it was understood that the contribution was being made due to the Councilmember's general support of electric vehicle infrastructure. This exclusion provides clarity around campaign contributions in accordance with the Supreme Court holdings stating that campaign contributions based on whether candidates support the views of the contributors are unavoidable. *See generally, McCormick v. United States*, 500 U.S. 257, 272 (1991) (“Serving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator. It is also true that campaigns must be run and financed. Money is constantly being solicited on behalf of candidates, who run on platforms and who claim support on the basis of their views and what they intend to do or have done. Whatever ethical considerations and appearances may indicate, to hold that legislators commit the federal crime of extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries, is an unrealistic assessment of what Congress could have meant by making it a crime to obtain property from another, with his consent, “under color of official right.” To hold otherwise would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the Nation.”).

<sup>39</sup> *E.g.*, Councilmember A and Councilmember B are both seeking a position on a committee that will help their reelection chances. Councilmember A offers to stop seeking the position and allow Councilmember B to secure the position if Councilmember B agrees to vote for a bill sponsored by Councilmember A. Councilmember B stands to personally benefit from their place on the committee in their upcoming reelection campaign. However, this type of horse-trading constitutes legitimate compromise in lawmaking and is not prohibited by the statute. While general trading of political favors is not prohibited, trades that go beyond political favors are still prohibited. For example, if Councilmember A asked Councilmember B to sell a property to Councilmember A at a discounted price in exchange for Councilmember A's vote on a bill, Councilmember A's conduct would not fall within the exclusion.

<sup>40</sup> *See*, D.C. Code § 1-1161.01(6).

***Relation to Current District Law.*** *The revised bribery of a public servant statute changes District law in three main ways.*

First, the revised bribery of a public servant offense applies to bribes made in exchange for an agreement or understanding that the public servant will engage in certain types of conduct. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Current D.C. Code § 22-712 prohibits offering, giving, or agreeing to give something of value to certain public servants in return for an agreement or understanding that an official act of the public servant will be influenced by the bribe. The statute does not define “influence” and there is no case law clearly specifying the degree of influence or if any minimum is required. Similarly, current D.C. Code § 22-704, the corrupt influence statute, requires the person to act “with the intent to influence” an official’s action but does not clearly define the term “influence” and there is no DCCA case law on point. In contrast, the revised bribery of a public servant statute specifies that the intended exchange must be for an agreement or understanding regarding the public servant’s performance of an official act, failure to perform an official duty, or violation of a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust.<sup>41</sup> By requiring an intent that the *quid pro quo* be for the actual performance of an official act, failure to perform an official duty, or a violation of a law relating to the public servant’s office or employment that is in a manner that substantially threatens the public trust, the revised bribery of a public servant offense provides clear guidance to public servants on what conduct, short of agreeing to perform an official act, is prohibited and avoids confusion stemming from the use of the term “influence.” Additionally, the inclusion of understandings or agreements to violate a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust ensures conduct that clearly violates the public trust but that may not involve an “official act” or “official duty” falls within the statute.<sup>42</sup> This change improves the clarity, consistency, and proportionality of the District law.

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<sup>41</sup> Where the intended agreement involves merely an agreement or understanding that the public servant be “influenced” rather than actually perform an official act, liability may still attach when the agreement is to violate a duty or law relating to the public servant’s office or employment in a manner that substantially threatens the public trust, including violations of codes of conduct. For example, if a lawmaker accepts money from a “prohibited source” in exchange for an agreement or understanding that the lawmaker will give the prohibited source information that would help the person obtain a government contract, the lawmaker would be agreeing to violate the code of conduct’s prohibition on the acceptance of gifts from a prohibited source in a manner that substantially threatens the public trust. In addition, the revised unlawful compensation or gratuity to a public official statute in § 22A-4103 covers personal benefits to public servants made without an attempt to influence the conduct of the public servant.

<sup>42</sup> See, *McDonnell v. United States*, 579 U.S. 550 (2016) (overturning bribery conviction of governor who accepted large amounts of money and gifts in exchange for arranging meetings where the briber was introduced to state employees that could assist the briber in their business affairs on the grounds that the arranging of the meetings did not clearly constitute “official acts” within the definition of the term). Under the revised bribery of a public servant statute, the government would not need to prove such meetings were an “official act” if the public servant violated a law related to the public servant’s office or employment that substantially threatened the public trust by accepting the bribe.

Second, the revised bribery of a public servant offense specifies express exclusions for conduct that is not inherently corrupt or that is protected by the First Amendment. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Current D.C. Code § 22-712 expressly provides only a single exclusion from liability for concurrence in official action in the course of legitimate compromise between public servants and current § 22-704 does not expressly establish any exclusions from liability. There are no additional exclusions with respect to benefits to the general public, campaign contributions protected under the First Amendment, or other forms of salary, fees, or compensation authorized by law expressly provided in either statute. In contrast, the revised bribery of a public servant statute expressly excludes offering, giving, or agreeing to give these types of benefits to public servants from the scope of the statute even where there may be an incidental personal benefit to the public servant. By expressly establishing these exclusions for non-culpable—and sometimes constitutionally protected—conduct, the revised statute provides actors and public servants with clearer guidance on what conduct is prohibited and ensures that non-culpable and protected *quid pro quo* agreements are not swept up into the statute. This change improves the clarity, consistency, and proportionality of District law.

Third, the revised bribery of a public servant statute does not cover bribery of neutrals in private matters who are not public servants such as referees and arbitrators. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Subsection (b) of the corrupt influence statute applies to bribes of special masters, auditors, jurors, arbitrators, umpires, or referees. In contrast, the revised definition of “public servant” requires a person to be performing a function of the District government or to have been elected, nominated, or appointed to do so and the revised bribery of a public servant statute does not apply to persons who are not public servants. Although bribes of neutrals and independent officials in private matters constitute culpable conduct, they do not constitute public corruption that undermines faith in the government and public institutions. Accordingly, such bribes will be covered by a new bribery of third-party neutrals and independent officials offense in the fraud chapter of Title 22A.<sup>43</sup> This change improves the clarity, consistency, and proportionality of District law.

*Beyond these three changes to Current District law, four other aspects of the revised statute may constitute substantive changes to District law.*

First, the revised bribery of a public servant statute requires a “knowingly” culpable mental state with respect to all elements of the offense. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). The current bribery statute in D.C. Code § 22-712 does not specify a culpable mental state and instead prohibits “corruptly” offering, giving, or agreeing to offer anything of value to a public servant in

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<sup>43</sup> The language of and commentary on this new statute will be provided in a forthcoming report.

return for an agreement or understanding that an official act of the public servant will be influenced thereby or that the public servant will engage in certain conduct. Current D.C. Code § 22-704, the corrupt influence statute, requires the person act “corruptly” in giving any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value “with the intent” to influence the official or cause the official to take certain action. Neither statute defines the term “corruptly” and the corrupt influence statute does not define “with intent.” Additionally, there is no DCCA case law defining the terms or otherwise establishing the *mens rea* for the offenses.<sup>44</sup> The term “corruptly” has been notoriously hard for courts to define and both the American Law Institute and many states have rejected its use in revised statutes.<sup>45</sup> Federal courts have held under analogous federal bribery statutes the word corruptly requires a *quid pro quo*.<sup>46</sup> Furthermore, “corruptly” is generally understood to be associated with “wrongful, immoral, depraved, or evil conduct.”<sup>47</sup> However, it is not clear

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<sup>44</sup> The term “corruptly” is used in the obstruction of justice context where the District has an expansive body of case law but even that body of case law has not clearly defined the term or established whether a knowingly or purposely mental state is associated with the term. See *Hawkins v. United States*, 119 A.3d 687, 101 (D.C. 2015) (stating the language “with intent to undermine the integrity of a pending investigation” is “similar to the definition employed by several federal appellate courts—that to act “corruptly” means to act “*knowingly and dishonestly*, with the specific intent to subvert or undermine the due administration of justice” and citing , *United States v. Kay*, 513 F.3d 432, 454 (5<sup>th</sup> Cir.2007); *United States v. Gordon*, 710 F.3d 1124, 1151 (10<sup>th</sup> Cir. 2013) (defining “corruptly” as “*with an improper purpose* and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct the” proceeding) (quoting *United States v. Friske*, 640 F.3d 1288, 1291 (11<sup>th</sup> Cir.2011))”) (emphasis added).

<sup>45</sup> See e.g., *United States v. Biaggi*, 674 F. Supp. 86, 88 (E.D.N.Y. 1987), *aff'd*, 853 F.2d 89 (2d Cir. 1988)(noting “the American Law Institute approved the elimination of the word “corrupt” from its definition of bribery, a change adopted by a great majority of states in revisions and proposed revisions of their bribery statutes”)(citing Model Penal Code § 240.1, note 2 (1980), Ark. § 41–2703; Colo. § 18–8–302; Conn. §§ 53a–147, –148, –152, –153; Del. tit. 11, §§ 1201, 1203, 1264, 1265; Ga. § 26–2301; Haw. §§ 710–1040, –1073; Idaho § 18–1352; Ill. ch. 38, § 33–1; Ind. § 35–44–1–1; Iowa §§ 722.1, .2; Kan. § 21–3901; Ky. § 521.020; La. § 14:118; Me. tit. 17A, § 602; Minn. § 609.42; Mo. § 576.010; Mont. § 94–7–102; Neb. §§ 28–917, –920; N.H. § 640:2; N.J. § 2C:27–2; N.M. §§ 40A–24–1, 12; N.Y. §§ 200.00, .04, .15, .20; N.D. § 12.1–12–0.1; Ore. §§ 162.015, .025; Pa. tit. 18, § 4701; P.R. tit. 33, §§ 4360, 4363; S.D. §§ 22–12A–6, –7, –11; Tex. § 36.02; Utah §§ 76–8–103, –105; Va. § 18.2–447; Wash. § 9A.68.010; W.Va. § 61–5A–3; Cal. (p) S.B. 27, §§ 14301, 14302; Mass. (p) ch. 268A, §§ 2, 3; Mich. (p) § 4705; S.C. (p) §§ 20.18, .33; Tenn (p) ch. 21, § 2102; Vt. (p) § 2.30.2; W.Va. § (p) 61–9–11.); Model Penal Code § 240.1 n.2 (“The bribery offense abandons the usual focus upon “corrupt” agreements or a “corrupt” intent and instead spells out with more particularity the kinds of arrangements that are prohibited. It is made clear, for example, that compromise in the legislative process is not prohibited, whereas payments in order to meet competition or to respond to extortionate threats by public officials are within the prohibition.”); see also *United States v. Dorri*, 15 F.3d 888, 894 (9<sup>th</sup> Cir. 1994)(Kozinski, J., dissenting)(explaining: “‘[C]orruptly,’ like ‘due process,’ ‘malice aforethought’ or ‘proximate cause,’ is a concept that can’t be easily captured in a single formula, as it varies too much from situation to situation. There’s certainly a core meaning to it: Conduct is corrupt if it’s an improper way for a public official to benefit from his job. But what’s improper turns on many different factors, such as tradition, context and current attitudes about legitimate rewards for particular officeholders.”); *United States v. Brady*, 168 F.3d 574, 578 (1<sup>st</sup> Cir. 1999) (stating: “There is no hope in one opinion of providing a definitive gloss on the word “corruptly”; neither would it be wise to try.”).

<sup>46</sup> See e.g., *United States v. Robertson*, 103 F.4th 1, 37 (D.C. Cir. 2023) (“Courts have interpreted “corruptly” in that statute to mean that the defendant must intend that the bribe be part of a “*quid pro quo*.”).

<sup>47</sup> See e.g., *Snyder v. United States*, 144 S. Ct. 1947, 1969, 219 L. Ed. 2d 572 (2024) (J. Jackson, dissenting) (“In *Arthur Andersen LLP v. United States*, 544 U.S. 696, (2005), we wrote that the term ““corruptly”” is

whether corrupt intent in the bribery context requires an additional showing that the actor knew their conduct was unlawful or whether the *quid pro quo* itself is sufficient to establish an unlawful “purpose” because such a *quid pro quo* is deemed inherently corrupt.

To resolve any ambiguity regarding the meaning of the term “corruptly,” the revised bribery of a public servant statute eschews use of the term “corruptly” and expressly establishes a “knowingly” mental state with respect to the actor’s conduct and all aspects of the required *quid pro quo* without requiring any additional proof of “corrupt” intent. Under the revised statute, liability is established by showing the actor knowingly offered, gave, or agreed to give a benefit with intent to form a *quid pro quo* agreement for the performance of an official act, a failure to perform an official duty, or a violation of a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust. The revised offense separately specifies exclusions for conduct that is not culpable but that would otherwise fall within the statute. Further, the requirement of a *personal* benefit ensures that the conduct is the type of personal profiting from office that is considered corrupt and not akin to accepting benefits on behalf of the public. Applying an express “knowingly” culpable mental state requirement to all statutory elements avoids any confusion with respect to the meaning of the term “corruptly” without changing the essence of the offense. This change improves the overall clarity and consistency of the District Law.

Second, the revised bribery of a public servant offense does not expressly proscribe bribes in return for an understanding or agreement that the public servant will “commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.” There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Current D.C. Code § 22-712 expressly applies to understandings or agreements that a public servant “commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.” The statute does not define fraud<sup>48</sup> and there is no District case law indicating whether the term is limited to obtaining the property of another by deceiving the owner<sup>49</sup> or whether it extends to “honest services fraud”<sup>50</sup> as well. Resolving any ambiguity, the revised bribery of a public servant statute does not refer to fraud and instead covers these types of frauds through the prohibition on agreements, to

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‘normally associated with wrongful, immoral, depraved, or evil’ conduct. We therefore related the term with “consciousness of wrongdoing.”) (internal citations omitted).

<sup>48</sup> The legislative history cites as illustration “an officer in charge of administering a government contract in return for his or her agreement to ignore the failure of the contractor to meet the specifications of the contract.” Judiciary Committee, Report on Bill No. 4-193, the D.C. Theft and White Collar Crime Act of 1982, at 83.

<sup>49</sup> The requirement that an actor obtain, or attempt to obtain, *property*, by deceiving the owner would exclude many acts of deceitful conduct where there is no property owned by the government at issue.

<sup>50</sup> Honest services fraud covers violations of a public servant’s inherent fiduciary duty to make governmental decisions based on the public’s best interest. “Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest. ‘If the official instead secretly makes his decision based on his own personal interests—as when an official accepts a bribe or personally benefits from an undisclosed conflict of interest—the official has defrauded the public of his honest services.’” *United States v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999) (internal citation omitted). This type of fraud is not covered by the revised fraud offenses which cover only obtaining property by deception. *See also* 18 U.S.C. § 1346.

violate an official duty, or to violate a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust. Engaging in conduct that would constitute the offense of fraud as specified in the revised code or engaging in honest services fraud as construed in federal law could constitute either a violation of an official duty or a violation of a law relating to the public servant’s office or employment that substantially threatens the public trust. In fact, the Council Code of Conduct applicable under D.C. Code § 1-1162.01a<sup>51</sup> specifies as a violation “being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the District of Columbia”<sup>52</sup>, which matches the language regarding fraud in the current bribery statute. Additionally, District Code and the Code of Conduct both separately address conflicts of interest and other conduct that may constitute “honest services fraud” but may not be covered under a narrow interpretation of the current bribery statute.<sup>53</sup> By specifying that the prohibited agreement be a violation of an official duty or violation of a law relating to the public servant’s office or employment that is in a manner that substantially threatens the public trust, the revised bribery of a public servant statute provides public servants with clear guidance, through other laws, as to what conduct is prohibited. This change closes a potential gap in liability and improves the clarity and proportionality of District law.

Third, the revised bribery of a public servant statute explicitly prohibits bribes made to candidates for elective office. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). The current bribery statute, D.C. Code § 22-713, applies to persons “elected, nominated or appointed” to be a public servant as defined in D.C. Code §22-711. It is not clear whether the term “nominated” includes candidates nominated to run for public office in the electoral process or whether it is limited to persons nominated by parts of the government and subject to confirmation or similar procedures.

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<sup>51</sup> D.C. Code § 1-1162.01a (“This chapter and the Code of Conduct shall apply to all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions, but excluding the courts.”); *see also* D.C. Code § 1-1161.01(7) (“Code of Conduct” means those provisions contained in the following: (A) For members and employees of the Council, the Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council; (B) Sections 1-618.01 through 1-618.02; (C) Chapter 7 of Title 2; (D) Section 2-354.16; (E) For employees and public officials who are not members or employees of the Council, Chapter 18 of Title 6B of the District of Columbia Municipal Regulations; (E-i) Chapter 11B of this title; (F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.38 that are subject to the penalty provisions of § 1-1162.21. (G) Section 1-329.01, concerning gifts to the District of Columbia.)

<sup>52</sup> *See*, Council of the District of Columbia, Code of Official Conduct, Council Period 25 as passed in the “Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 25, Resolution of 2023”.

<sup>53</sup> *E.g.*, D.C. Code § 1-1162.23(a) and the Council Code of Conduct provide that: “No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests or the financial interests of a person closely affiliated with the employee.”

There is no case law on point. At the same time, it is clear that the term “nominated” does not encompass all persons considered to be candidates under District ethics laws because persons can be candidates without being nominated.<sup>54</sup> This means that the current bribery statute does not include all candidates for public office and may not include any candidates even though they may receive bribes or offers of bribes during the course of their campaign as well as right before they become public servants by virtue of being elected. The current corrupt influence statute, D.C. Code § 22-704, applies to enumerated public servants “before or after” they are qualified. However, it is unclear whether this extends to candidates for public office or whether there are any temporal limitations with respect to the time before a person is elected, nominated, or appointed. To resolve any ambiguity, the revised bribery of a public servant statute explicitly includes “candidates” for public office as defined in D.C. Code § 1-1161.06(6) and specifies that the term “nominated” applies to nominations for appointment rather than nominations by parties to run for office. By specifically applying the statute to candidates as defined in D.C. Code § 1-1161.06(6), the revised bribery of a public servant statute ensures that bribes of persons actively seeking public office are clearly prohibited. This change closes a potential gap in liability and improves the clarity of the revised code.

Fourth, the revised bribery of a public servant statute does not categorically exclude all independent contractors. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Under D.C. Code § 22-711(6), “independent contractors” are expressly excluded from the definition of “public servants” applicable to the current bribery statute, D.C. Code § 22-712. The corrupt influence statute, D.C. Code § 22-704, includes bribes of “any person acting in any capacity for the District of Columbia” but does not specifically include or exclude independent contractors. The term “independent contractor” in § 22-711 is not defined by current law but legislative history indicates that the “question of whether a person is an independent contractor in the context of the bribery provision turns on the actual control exercised by the District of Columbia government over the contractor. Anyone who was actually under the control of the District government would not be an independent contractor.”<sup>55</sup> This statement in the legislative history seemingly allows that some independent contractors could be covered by the bribery statute if they are under control of the District government but does not provide clear guidance on when an independent contractor is or is not covered under the bribery statute.<sup>56</sup> In contrast, the revised bribery of a public servant statute does not expressly include or exclude “independent contractors” in the definition of public servants who are

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<sup>54</sup> D.C. Code § 1-1161.01(6) (defining candidate as a person seeking public office whether or not they are elected or nominated).

<sup>55</sup> Judiciary Committee, Report on Bill No. 4-193, the D.C. Theft and White Collar Crime Act of 1982, at 79.

<sup>56</sup> For example, court reporters in the District of Columbia courts are independent contractors who perform a function of the court at the direction of the court when transcribing a hearing and would thus, arguably, be under the control of the courts while performing that function. In contrast, third-party inspectors are also independent contractors who perform a function of the government, when hired as inspectors by private parties pursuant to a government inspection program, but are not as obviously under the direct control of the government.

covered under the offense. Rather, the revised bribery of a public servant statute covers independent contractors if they satisfy the statutory definition's requirement that the person perform a function of the District government or of a court of the District of Columbia. Independent contractors who do not perform such a function are necessarily excluded. By relying on the statute's requirement that a public servant perform a function of the District government or a function of the District of Columbia Courts, the revised bribery of a public servant statute avoids confusion regarding whether a person who is generally deemed an independent contractor but is performing a function of the government or a court is covered by the statute. This change closes a potential gap in liability and improves the overall clarity and consistency of District law.

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

**§ 22A-4102. Solicitation or acceptance of a bribe by a public servant.**

- (a) *Offense.* An actor commits solicitation or acceptance of a bribe by a public servant when the actor:
- (1) Is, in fact, a public servant or candidate for elective office;
  - (2) Knowingly solicits, demands, accepts, or agrees to accept any personal benefit, directly or indirectly, from another person;
  - (3) With intent that the personal benefit be in exchange for an agreement or understanding that the actor will:
    - (A) Perform an official act;
    - (B) Fail to perform an official duty; or
    - (C) Violate a law relating to the public servant's office or employment in a manner that substantially threatens the public trust.
- (b) *Exclusions.* An actor does not commit an offense under this section when the personal benefit is, in fact:
- (1) An advantage promised generally to a group or class of voters as a consequence of public measures which a public servant or candidate engages to support or oppose;
  - (2) Salary, fees, or other compensation authorized by law;
  - (3) A campaign contribution that is not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(3)(A)-(a)(3)(C); or
  - (4) A trivial benefit that involves no substantial risk of undermining official impartiality.
- (c) *Penalty.*
- (1) Solicitation or acceptance of a bribe by a public servant is a Class 7 felony.
  - (2) *Merger.* A conviction for solicitation or acceptance of a bribe by a public servant shall merge with a conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (d) *Definitions.* In this section, the term:
- (1) "Candidate" has the same meaning specified in D.C. Code § 1-1161.01(6); and
  - (2) "Law relating to the public servant's office or employment" means any District law that specifically applies to a person in their role as a public servant and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

***Explanatory Note.*** *The revised solicitation or acceptance of a bribe by a public servant statute prohibits public servants from soliciting or accepting any personal benefit in exchange for an agreement or understanding that the public servant will engage in certain conduct related to official acts, official duties, or laws relating to a public servant's*

*office or employment bearing on public trust. There are no penalty gradations and a conviction for solicitation or acceptance of a bribe by a public servant merges with a conviction for solicitation or acceptance of unlawful gratuity by a public servant when arising from the same act or course of conduct. The revised offense, in conjunction with a new bribery of a public servant offense<sup>57</sup>, consolidates and replaces the District’s current and overlapping bribery statutes in D.C. Code § 22-712 (bribery) and D.C. Code § 22-713 (corrupt influence).*

Subsection (a) specifies the elements for the solicitation or acceptance of bribe by a public servant offense. Paragraph (a)(1) requires as a circumstance element that the actor be a “public servant” or “candidate” for elective office. “Public servant” is a defined term in § 22A-101<sup>58</sup> and “candidate” is a defined term in D.C. Code § 1-1161.01(6).<sup>59</sup> The use of “in fact” in paragraph (a)(1) indicates that there is no culpable mental state with respect to the actor’s status as a public servant or candidate for elective office.

Paragraph (a)(2) requires that the actor “knowingly solicits, demands, accepts, or agrees to accept any personal benefit, directly or indirectly, from another person.” The culpable mental state is “knowingly,” a defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements in (a)(2) and after, unless and until another mental state is specified. Here, the “knowingly” mental state requires that the actor must be practically certain that they are soliciting, demanding, accepting, or agreeing to accept a “personal benefit” from another person. “Personal benefit” is a defined term in § 22A-101.<sup>60</sup> The term “personal benefit” encompasses benefits to third persons or entities when the beneficiary has a significant personal interest in the welfare of the third person or entity.<sup>61</sup>

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<sup>57</sup> See RCC § 22A-4101.

<sup>58</sup> “Public servant” means: (A) Any officer, employee, or other person who performs a function of the District government including jurors; (B) Any person, other than a witness, who performs a function of a court of the District of Columbia; or (C) Any person elected, nominated for appointment, or appointed to be a public servant.

<sup>59</sup> “Candidate” means an individual who seeks election to public office, whether or not the individual is nominated or elected. An individual deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual: (A) Obtained or authorized any other person to obtain nominating petitions to qualify the individual for election to public office; (B) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about the individual’s election to public office; or (C) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed to be a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters and has not yet made any decision regarding whether to seek election to public office.

<sup>60</sup> “Personal benefit” means any gain or advantage to the beneficiary personally, including a gain or advantage to any person or entity in whose welfare the beneficiary has a significant personal interest.

<sup>61</sup> For example, a parent may have a significant interest in the welfare of their child. If a public servant solicited an investment in a company belonging to the child of a public servant, the investment would likely constitute a personal benefit to the public servant even though the public servant did not directly obtain a gain or advantage. In contrast, if a public servant solicited investment in local businesses in the public

Paragraph (a)(3) specifies that the actor must solicit, demand, accept, or agree to accept the personal benefit “with the intent that the personal benefit be in exchange for an agreement or understanding that the actor” will engage in any of the conduct specified in subparagraphs (a)(3)(A)-(a)(3)(C) related to the actor’s current or future role as a public servant. This paragraph establishes the *quid pro quo* requirement of the offense.<sup>62</sup> The words “solicit” and “demand” clarify that solicitation of a bribe by a public servant does not require that the actor actually received a personal benefit. Merely soliciting or demanding a personal benefit satisfies the element under (a)(3) even if no other person provides or offers a personal benefit to the public servant in response to the solicitation or demand. The phrases “agree” and “agrees to accept” clarifies that the actor need not instigate the transaction. “Intent” is a defined term in RCC § 22A-206 that here means the actor was practically certain that the personal benefit was given in exchange for an agreement or understanding that the actor would engage in the conduct specified in (a)(3)(A)-(a)(3)(C). Per the rule in § 22A-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. Thus, it is not necessary to prove the actor actually reached an agreement or understanding with another person that they would engage in the conduct described in subparagraphs (a)(3)(A)-(a)(3)(C) in their role as a public servant in exchange for the personal benefit. Likewise, it is not necessary that the actor actually perform an official act, fail to perform an official duty, or violate a law relating to the actor’s office or employment in a manner that substantially threatens the public trust.<sup>63</sup> Rather, paragraph (a)(3) requires only that the actor was practically certain that the personal benefit was solicited, demanded, accepted, or agreed to in exchange for an agreement or understanding that the actor would engage in any of the conduct specified in subparagraphs (a)(3)(A)-(a)(3)(C).

Subparagraphs (a)(3)(A)-(a)(3)(C) specify three alternative subjects of the intended agreement or understanding in paragraph (a)(3). Subparagraph (a)(3)(A) specifies the

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servant’s neighborhood, the general benefit to the neighborhood and local businesses would not constitute a personal benefit unless the public servant had a significant personal interest in one of the local businesses. Likewise, merely incidental benefits stemming from investment in the businesses in the public servant’s neighborhood would not constitute the type of personal benefits covered by the revised statute.

<sup>62</sup> See *United States v. Silver*, 948 F.3d 538, 554 (2d Cir. 2020)(explaining in the federal context that “bribery’s *quid pro quo* requirement serves the same function as does the nexus requirement for illegal gratuities: avoiding the ‘peculiar result[]’ that, without requiring a *quid pro quo*, federal law might unconstitutionally criminalize ‘any effort to buy favor or generalized goodwill from an official who either has been, is, or may at some unknown, unspecified later time, be in a position to act favorably to the giver’s interests’”) (citing *United States v. Sun–Diamond Growers*, 526 U.S. at 405–06 (1999)).

<sup>63</sup> The various codes of conduct referenced in D.C. Code § 1-1161.01(7) are examples of laws governing District officials and employees. Some violations of those laws substantially threaten the public trust while others do not. *E.g.*, the Council Code of Conduct requires employees to obtain the approval of his or her employer before engaging in outside employment. The mere failure of a public servant to obtain supervisor approval for a job unrelated to their government work, though technically a violation of the code of conduct, is not the type of violation that substantially threatens public trust. In contrast, violations of rules pertaining to conflicts of interest, use of government resources, and disclosure of confidential information are much more likely to substantially threaten the public trust. To fall within the revised statute, the violation of a law pertaining to a public servant’s office of employment must be in a manner that substantially threatens the public trust and not a mere technical violation.

performance of an “official act.” Subparagraph (a)(3)(B) specifies the failure to perform an “official duty.” And subparagraph (a)(3)(C) specifies the violation of a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust. “Official act”<sup>64</sup> and “official duty”<sup>65</sup> are defined terms in RCC § 22A-101. The phrase “law relating to the public servant’s office or employment” is a defined term in subsection (d) of the offense.<sup>66</sup> By definition, only public servants can perform an “official act,” fail to perform an “official duty,” or violate a “law relating to the actor’s office or employment.” Thus, in cases where the actor is a “candidate” for elective office and not yet a “public servant,” the intent must be for the personal benefit to be in exchange for an agreement or understanding that the actor will engage in the specified conduct after becoming a public servant.

Subsection (b) establishes four exclusions from liability for conduct that otherwise falls under subsection (a). First, paragraph (b)(1) excludes from liability soliciting, demanding, accepting, or agreeing to accept a personal benefit that is an advantage promised generally to a group or class of voters as a consequence of public measures which a public servant or candidate engages to support or oppose.<sup>67</sup> Paragraph (b)(2) excludes from liability soliciting, demanding, accepting, or agreeing to accept a personal benefit that constitutes salary, fees, or other compensation authorized by law. Paragraph (b)(3) excludes from liability soliciting, demanding, accepting, or agreeing to accept campaign contributions that are not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in subparagraphs (a)(3)(A)-(a)(3)(C).<sup>68</sup> Finally, paragraph

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<sup>64</sup> “Official act” means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of a public servant in their official capacity.

<sup>65</sup> “Official duty” means any action a public servant is required to perform that does not involve an exercise of discretion on the part of the public servant.

<sup>66</sup> See e.g., the various codes of conduct referenced in D.C. Code § 1-1161.01(7).

<sup>67</sup> E.g., A professional soccer team is seeking tax subsidies to build a stadium in the District. Residents are concerned about potential traffic and parking problems in the neighborhood on game days. Councilmember X asks the soccer team to commit to providing free shuttle service to the stadium and building additional parking lots within a mile of the stadium to help with traffic in exchange for Councilmember X’s vote in favor of the tax subsidies. Councilmember X is one of the soccer team’s season ticket holders and would personally benefit from both the free shuttle service and parking on game days. Accordingly, the free shuttle service and additional parking lots would seemingly create a personal benefit to Councilmember X. However, because the benefit of free shuttle service and parking is available to the public generally and part of a public measure the Councilmember is supporting, the demand that the soccer team provide this benefit would not be prohibited by the solicitation or acceptance of a bribe by a public servant statute. If, on the other hand, Councilmember X demanded box seating or other personal perks for themselves in exchange for Councilmember X’s vote on the bill, the councilmember’s demand would not fall within the exclusion.

<sup>68</sup> E.g., Councilmember A is a strong supporter of electric vehicle infrastructure and solicits donations from supporters of electric vehicles stating generally that they will continue their support of electric vehicle infrastructure if reelected. Absent a clear and unambiguous promise by Councilmember A that they will engage in particular conduct in exchange for the campaign contribution, this solicitation would not run afoul of the revised solicitation or acceptance of a bribe by a public servant, even though it was understood that the contribution was being made due to the Councilmember’s general support of electric vehicle infrastructure. This exclusion provides clarity around campaign contributions in accordance with Supreme Court holdings that state campaign contributions based on whether candidates support the views of the contributors are unavoidable. See generally, *McCormick v. United States*, 500 U.S. 257, 272 (1991) (“Serving constituents

(b)(4) excludes from liability soliciting, demanding, accepting, or agreeing to accept a personal benefit that constitutes concurrence in official action in the course of legitimate compromise among public servants.<sup>69</sup>

Subsection (c) specifies the penalty classification for solicitation or acceptance of a bribe by a public servant and establishes a merger provision. Paragraph (c)(1) establishes that solicitation or acceptance of a bribe by a public servant is a class 7 felony. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.] Paragraph (c)(2) states that a conviction for solicitation or acceptance of a bribe by a public servant shall merge with a conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant when the offenses arise out of the same act or course of conduct. Paragraph (c)(3) also provides that the rules of priority in RCC § 22A-214 govern the merger. Subsection (d) defines the term “candidate” by cross-referencing another section in District code<sup>70</sup> and defines the term “law relating to the actor's office or employment” for the offense.

***Relation to Current District Law.*** *The revised solicitation or acceptance of a bribe by a public servant statute changes District law in three main ways.*

First, the revised solicitation or acceptance of a bribe by a public servant offense applies to solicitation or acceptance of bribes made in exchange for an agreement or understanding that the public servant will engage in certain types of conduct. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Current D.C. Code § 22-712 prohibits certain public servants from soliciting, demanding, accepting, or agreeing to accept something of value in return for an agreement or

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and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator. It is also true that campaigns must be run and financed. Money is constantly being solicited on behalf of candidates, who run on platforms and who claim support on the basis of their views and what they intend to do or have done. Whatever ethical considerations and appearances may indicate, to hold that legislators commit the federal crime of extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries, is an unrealistic assessment of what Congress could have meant by making it a crime to obtain property from another, with his consent, “under color of official right.” To hold otherwise would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the Nation.”).

<sup>69</sup> *E.g.*, Councilmember A and Councilmember B are both seeking a position on a committee that will help their reelection chances. Councilmember A asks Councilmember B to vote for Councilmember A’s bill in exchange for Councilmember A dropping out of contention for the committee position and allowing Councilmember B to secure the spot. Councilmember B stands to personally benefit from their place on the committee in their upcoming reelection campaign. Accordingly, Councilmember A has offered Councilmember B a personal benefit in exchange for an agreement to perform an official act. However, this type of horse-trading constitutes legitimate compromise in lawmaking and is not prohibited by the statute. While general trading of political favors is not prohibited, trades that go beyond political favors are still prohibited. For example, if Councilmember A asked Councilmember B to sell a property to Councilmember A at a discounted price in exchange for Councilmember A’s vote on a bill, Councilmember A’s conduct would not fall within the exclusion.

<sup>70</sup> D.C. Code § 1-1161.01(6).

understanding that an official act of the public servant will be influenced by the bribe. The statute does not define “influence” and there is no case law clearly specifying the degree of influence or if any minimum is required. Similarly, current D.C. Code § 22-704, the corrupt influence statute, requires the person to act “with the intent to influence” an official’s action but does not clearly define the term “influence” and there is no DCCA case law on point. In contrast, the revised solicitation or acceptance of a bribe by a public servant statute specifies that the intended exchange must be for an agreement or understanding regarding the public servant’s performance of an official act, failure to perform an official duty, or violation of a law relating to the public servant’s office or employment that substantially threatens the public trust.<sup>71</sup>

By requiring an intent that the *quid pro quo* be for the actual performance of an official act, failure to perform an official duty, or a violation of a law relating to the public servant’s office or employment that substantially threaten the public trust, the revised solicitation or acceptance of a bribe by a public servant offense provides clear guidance to public servants on what conduct, short of agreeing to perform an official act, is prohibited and avoids confusion stemming from the use of the term “influence.” Additionally, the inclusion of understandings or agreements to violate a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust ensures conduct that clearly violates the public trust but that may not involve an “official act” or “official duty” falls within the statute.<sup>72</sup> This change improves the clarity, consistency, and proportionality of the District law.

Second, the revised solicitation or acceptance of a bribe by a public servant offense specifies express exclusions for conduct that is not inherently corrupt or that is protected by the First Amendment. Current D.C. Code § 22-712 expressly provides only a single exclusion from liability for concurrence in official action in the course of legitimate compromise between public servants. The statute does not establish any additional exclusions with respect to benefits to the general public, campaign contributions protected under the First Amendment, or other forms of salary, fees, or compensation authorized by

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<sup>71</sup> Where the intended agreement involves merely an agreement or understanding that the public servant be “influenced” in performing rather than actually perform an official act, liability may still be attached when the agreement is to violate a duty or law relating to the public servant’s office or employment in a manner that substantially threatens the public trust, including codes of conduct. For example, if a lawmaker accepts money from a “prohibited source” in exchange for an agreement or understanding that the lawmaker will give the prohibited source information that would help the person obtain a government contract, the lawmaker would be agreeing to violate the code of conduct’s prohibition on the acceptance of gifts from a prohibited source in a manner that substantially threatens the public trust. In addition, the revised solicitation of unlawful compensation or gratuity by a public official statute in § 22A-4104 covers personal benefits solicited or accepted by public servants with no agreement or intent to form an agreement regarding conduct by the public servant.

<sup>72</sup> See *McDonnell v. United States*, 579 U.S. 550 (2016) (overturning bribery conviction of governor who accepted large amounts of money and gifts in exchange for arranging meetings where the briber was introduced to state employees that could assist the briber in their business affairs on the grounds that the arranging of the meetings did not clearly constitute “official acts” within the definition of the term). Under the revised bribery of a public servant statute, the government would not need to prove such meetings were an “official act” if, by accepting the bribe, the public servant violated a law related to the public servant’s office or employment that substantially threatened the public trust.

law that may also offer personal benefits to the public servant. In contrast, the revised solicitation or acceptance of a bribe by a public servant statute expressly excludes *quid pro quo* agreements for these types of benefits from the scope of the statute. By expressly establishing these exclusions, the revised statute provides actors and public servants clearer guidance on what conduct is prohibited and ensures that non-culpable and protected *quid pro quo* agreements are not swept up into the statute. This change improves the clarity, consistency, and proportionality of District law.

Third, the revised solicitation or acceptance of a bribe by a public servant statute does not cover solicitation or acceptance of bribes by neutrals in private matters who are not public servants such as referees and arbitrators. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Subsection (b) of the corrupt influence statute applies to bribes of special masters, auditors, jurors, arbitrators, umpires, or referees. In contrast, the revised definition of “public servant” requires a person to be performing a function of the District government or to have been elected, nominated, or appointed to do so and the revised solicitation or acceptance of a bribe by a public servant statute does not apply to persons who are not public servants. Although solicitation or acceptance of bribes by neutral and independent officials in private matters constitute culpable conduct, they do not constitute public corruption that undermines faith in the government and public institutions. Accordingly, such conduct by private parties will be covered by a new solicitation or acceptance of a bribe by third-party neutrals and independent officials offense in the fraud chapter of Title 22.<sup>73</sup> This change improves the clarity, consistency, and proportionality of District law.

*Beyond these three changes to Current District law, four other aspects of the revised statute may constitute substantive changes to District law.*

First, the revised solicitation or acceptance of a bribe by a public servant statute requires a “knowingly” culpable mental state with respect to the soliciting, demanding, accepting, or agreeing to accept any personal benefit. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). The current bribery statute in D.C. Code § 22-712 does not specify a culpable mental state and instead prohibits “corruptly” soliciting, demanding, accepting, or agreeing to accept anything of value as a public servant in return for an agreement or understanding that an official act of the actor in their role as public servant will be influenced thereby or that the actor will engage in certain conduct in their role as a public servant. Current D.C. Code § 22-704, the corrupt influence statute, requires the public official to act “with intent or for the purpose of consideration” and appears to also require the public servant to act “corruptly”.<sup>74</sup> Neither

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<sup>73</sup> The language of and commentary on this new statute will be provided in a forthcoming report.

<sup>74</sup> D.C. Code § 22-704 reads: “(a) Whosoever corruptly, directly or indirectly, gives any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value to any ministerial, administrative, executive, or judicial officer of the District of

statute defines the terms “corruptly” and the corrupt influence statute does not define “with intent.” Additionally, there is no DCCA case law defining the terms or otherwise clearly establishing the *mens rea* for the offenses.<sup>75</sup> The term “corruptly” has been notoriously difficult for courts to define and both the American Law Institute and many states have rejected its use in revised statutes.<sup>76</sup> Federal courts have held that under analogous federal

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Columbia, or any employee, or other person acting in any capacity for the District of Columbia, or any agency thereof, either before or after the officer, employee, or other person acting in any capacity for the District of Columbia is qualified, with intent to influence such official's action on any matter which is then pending, or may by law come or be brought before such official in such official's official capacity, or to cause such official to execute any of the powers in such official vested, or to perform any duties of such official required, with partiality or favor, or otherwise than is required by law, or in consideration that such official being authorized in the line of such official's duty to contract for any advertising or for the furnishing of any labor or material, shall directly or indirectly arrange to receive or shall receive, or shall withhold from the parties so contracted with, any portion of the contract price, whether that price be fixed by law or by agreement, or in consideration that such official has nominated or appointed any person to any office or exercised any power in such official vested, or performed any duty of such official required, with partiality or favor, or otherwise contrary to law; *and whosoever, being such an official, shall receive any such money, bribe, present, or reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid shall be deemed guilty of bribery* and upon conviction thereof shall be punished by imprisonment for a term not less than 6 months nor more than 5 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.” (emphasis added). Although the clause pertaining to the conduct of the public servant does not use the term “corruptly”, it is likely that it would be incorporated through the use of the word “aforesaid.”

<sup>75</sup> The term “corruptly” is used in the obstruction of justice context where the District has an expansive body of case law but even that body of law has not clearly defined the term or established whether a knowingly or purposely mental state is associated with the term. *See Hawkins v. United States*, 119 A.3d 687, 101 (D.C. 2015) (stating the language “with intent to undermine the integrity of a pending investigation” is “similar to the definition employed by several federal appellate courts—that to act ‘corruptly’ means to act ‘knowingly and dishonestly, with the specific intent to subvert or undermine the due administration of justice’” and citing *United States v. Kay*, 513 F.3d 432, 454 (5<sup>th</sup> Cir. 2007); *United States v. Gordon*, 710 F.3d 1124, 1151 (10<sup>th</sup> Cir.2013) (defining “corruptly” as “with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct the” proceeding) (quoting *United States v. Friske*, 640 F.3d 1288, 1291 (11<sup>th</sup> Cir.2011))”) (emphasis added).

<sup>76</sup> *See e.g., United States v. Biaggi*, 674 F. Supp. 86, 88 (E.D.N.Y. 1987), *aff'd*, 853 F.2d 89 (2d Cir. 1988) (noting “the American Law Institute approved the elimination of the word ‘corrupt’ from its definition of bribery, a change adopted by a great majority of states in revisions and proposed revisions of their bribery statutes”) (citing Model Penal Code § 240.1, note 2 (1980), Ark. § 41–2703; Colo. § 18–8–302; Conn. §§ 53a–147, –148, –152, –153; Del. tit. 11, §§ 1201, 1203, 1264, 1265; Ga. § 26–2301; Haw. §§ 710–1040, –1073; Idaho § 18–1352; Ill. ch. 38, § 33–1; Ind. § 35–44–1–1; Iowa §§ 722.1, .2; Kan. § 21–3901; Ky. § 521.020; La. § 14:118; Me. tit. 17A, § 602; Minn. § 609.42; Mo. § 576.010; Mont. § 94–7–102; Neb. §§ 28–917, –920; N.H. § 640:2; N.J. § 2C:27–2; N.M. §§ 40A–24–1, 12; N.Y. §§ 200.00, .04, .15, .20; N.D. § 12.1–12–0.1; Ore. §§ 162.015, .025; Pa. tit. 18, § 4701; P.R. tit. 33, §§ 4360, 4363; S.D. §§ 22–12A–6, –7, –11; Tex. § 36.02; Utah §§ 76–8–103, –105; Va. § 18.2–447; Wash. § 9A.68.010; W.Va. § 61–5A–3; Cal. (p) S.B. 27, §§ 14301, 14302; Mass. (p) ch. 268A, §§ 2, 3; Mich. (p) § 4705; S.C. (p) §§ 20.18, .33; Tenn (p) ch. 21, § 2102; Vt. (p) § 2.30.2; W.Va. § (p) 61–9–11.); Model Penal Code § 240.1 n.2 (“The bribery offense abandons the usual focus upon ‘corrupt’ agreements or a ‘corrupt’ intent and instead spells out with more particularity the kinds of arrangements that are prohibited. It is made clear, for example, that compromise in the legislative process is not prohibited, whereas payments in order to meet competition or to respond to extortionate threats by public officials are within the prohibition.”); *see also United States v. Dorri*, 15 F.3d 888, 894 (9<sup>th</sup> Cir. 1994) (Kozinski, J., dissenting) (explaining: “[C]orruptly,’ like ‘due process,’ ‘malice aforethought’ or ‘proximate cause,’ is a concept that can’t be easily captured in a single formula, as it varies too much from situation to situation. There’s certainly a core meaning to it: Conduct is corrupt if it’s an

bribery statutes the word “corruptly” requires a *quid pro quo*.<sup>77</sup> Furthermore, “corruptly” is generally understood to be associated with “wrongful, immoral, depraved, or evil conduct.”<sup>78</sup> However, it is not clear whether corrupt intent in the bribery context requires an additional showing that the actor knew their conduct was unlawful or whether the *quid pro quo* itself is sufficient to establish an unlawful “purpose” because such a *quid pro quo* is deemed inherently corrupt.

To resolve any ambiguity regarding the meaning of the term “corruptly,” the revised solicitation or acceptance of a bribe by a public servant statute eschews use of the term “corruptly” and expressly establishes a “knowingly” mental state with respect to the actor’s conduct and all aspects of the required *quid pro quo* without requiring any additional proof of “corrupt” intent. Under the revised statute liability is established by showing knowledge and intent to form a *quid pro quo* agreement for the performance of an official act, a failure to perform an official duty, or a violation of a law relating to the public servant’s office or employment done in a manner that substantially threatens the public trust. The revised offense separately specifies exclusions for conduct that is not culpable but that would arguably fall within the statute without the inclusion of the corruptly modifier. Further, the requirement of a “personal benefit” along with the enumerated exclusions ensures that that conduct is of the nature considered corrupt and not akin to accepting benefits on behalf of the public. Applying an express “knowingly” culpable mental state requirement to all statutory elements avoids any confusion with respect to the meaning of the term “corruptly” without changing the essence of the offense. This change improves the overall clarity and consistency of the District Law.

Second, the revised solicitation or acceptance of a bribe by a public servant offense does not expressly proscribe soliciting or accepting a bribe in return for an understanding or agreement that the public servant will “commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.” Current D.C. Code § 22-712 expressly applies to understandings or agreements that a public servant “commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.” The statute does not define fraud<sup>79</sup> and there is no District case law indicating whether the term is limited to obtaining property of another by deceiving the owner<sup>80</sup> or whether it extends to “honest

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improper way for a public official to benefit from his job. But what's improper turns on many different factors, such as tradition, context and current attitudes about legitimate rewards for particular officeholders.”); *United States v. Brady*, 168 F.3d 574, 578 (1st Cir. 1999) (stating: “There is no hope in one opinion of providing a definitive gloss on the word “corruptly”; neither would it be wise to try.”).

<sup>77</sup> See e.g., *United States v. Robertson*, 103 F.4th 1, 37 (D.C. Cir. 2023) (“Courts have interpreted ‘corruptly’ in that statute to mean that the defendant must intend that the bribe be part of a “*quid pro quo*.”).

<sup>78</sup> See e.g., *Snyder v. United States*, 144 S. Ct. 1947, 1969, 219 L. Ed. 2d 572 (2024) (J. Jackson, dissenting) (“In *Arthur Andersen LLP v. United States*, 544 U.S. 696, (2005), we wrote that the term ‘corruptly’ is ‘normally associated with wrongful, immoral, depraved, or evil’ conduct. We therefore related the term with ‘consciousness of wrongdoing.’”) (internal citations omitted).

<sup>79</sup> The legislative history cites as illustration “an officer in charge of administering a government contract in return for his or her agreement to ignore the failure of the contractor to meet the specifications of the contract.” Judiciary Committee, Report on Bill No. 4-193, the D.C. Theft and White Collar Crime Act of 1982, at 83.

<sup>80</sup> The requirement that an actor obtain, or attempt to obtain, *property*, by deceiving the owner would exclude many acts of deceitful conduct where there is no property owned by the government at issue.

services fraud.”<sup>81</sup> Resolving any ambiguity, the revised solicitation or acceptance of a bribe by a public servant statute does not refer to fraud and instead covers these types of frauds through the prohibition on agreements to violate an official duty or to violate a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust. Engaging in conduct that would constitute the offense of fraud as specified in the revised code or engaging in honest services fraud as construed in federal law could constitute either a violation of an official duty or a violation of a law relating to the public servant’s office or employment that substantially threatens the public trust. In fact, the Council Code of Conduct applicable under D.C. Code § 1-1162.01a<sup>82</sup> specifies as a violation “being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the District of Columbia,”<sup>83</sup> which matches language pertaining to fraud in the current bribery statute. Additionally, District Code and the Code of Conduct both separately address conflict of interests and other conduct that may constitute honest services fraud but may not be covered under a narrow interpretation of the current bribery statute.<sup>84</sup> By specifying that the prohibited agreement be a violation of an official duty or violation of a law relating to the public servant’s office or employment done in a manner that substantially threatens the public trust, the revised solicitation or acceptance of a bribe by a public servant statute provides public servants clear guidance, through other laws, as to what conduct is prohibited. This change closes a potential gap in liability and improves the clarity and proportionality of District law.

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<sup>81</sup> Honest services fraud covers violations of a public servant’s inherent fiduciary duty to make governmental decisions based on the public’s best interest. “Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest. ‘If the official instead secretly makes his decision based on his own personal interests—as when an official accepts a bribe or personally benefits from an undisclosed conflict of interest—the official has defrauded the public of his honest services.’” *United States v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999) (internal citation omitted). This type of fraud is not covered by the revised fraud offenses which cover only obtaining property by deception. *See also* 18 U.S.C. § 1346.

<sup>82</sup> D.C. Code § 1-1162.01a (“This chapter and the Code of Conduct shall apply to all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions, but excluding the courts.”); *see also* D.C. Code § 1-1161.01(7) (“Code of Conduct” means those provisions contained in the following: (A) For members and employees of the Council, the Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council; (B) Sections 1-618.01 through 1-618.02; (C) Chapter 7 of Title 2; (D) Section 2-354.16; (E) For employees and public officials who are not members or employees of the Council, Chapter 18 of Title 6B of the District of Columbia Municipal Regulations; (E-i) Chapter 11B of this title; (F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.38 that are subject to the penalty provisions of § 1-1162.21. (G) Section 1-329.01, concerning gifts to the District of Columbia.)

<sup>83</sup> *See* Council of the District of Columbia, Code of Official Conduct, Council Period 25 as passed in the “Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 25, Resolution of 2023”.

<sup>84</sup> *E.g.*, D.C. Code § 1-1162.23(a) and the Council Code of Conduct provide that: “No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests or the financial interests of a person closely affiliated with the employee.”

Third, the revised solicitation or acceptance of a bribe by a public servant statute explicitly prohibits solicitation or acceptance of bribes by candidates for elective office. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). The current bribery statute, D.C. Code § 22-712, applies to persons “elected, nominated or appointed” to be a public servant as defined in D.C. Code §22-711. It is not clear whether the term “nominated” includes candidates nominated to run for public office in the electoral process or whether it is limited to persons nominated by parts of the government and subject to confirmation or similar procedures. There is no case law on point. At the same time, it is clear that the term “nominated” does not encompass all persons considered to be candidates under District ethics laws because persons can be candidates without being nominated.<sup>85</sup> This means that the current bribery statute does not include all candidates for public office and may not include any candidates even though they may solicit, demand, accept, or agree to accept a bribe during the course of their campaign as well as right before they become public servants by virtue of being elected.

The current corrupt influence statute, D.C. Code § 22-704, applies to enumerated public servants “before or after” they are qualified. However, it is unclear whether this extends to candidates for public office or whether there are any temporal limitations with respect to the time before a person is elected, nominated, or appointed. To resolve any ambiguity, the revised solicitation or acceptance of a bribe by a public servant statute explicitly includes “candidates” for public office as defined in D.C. Code § 1-1161.06(6) and specifies that the term nominated applies to nominations for appointment rather than nominations by political parties to run for office. By specifically applying the statute to candidates as defined in D.C. Code § 1-1161.06(6), the revised solicitation or acceptance of a bribe by a public servant statute ensures that solicitations for or acceptance of bribes by persons actively seeking public office are clearly prohibited. This change closes a potential gap in liability and improves the clarity of the revised code.

Fourth, the revised solicitation or acceptance of a bribe by a public servant statute does not categorically exclude all independent contractors. There are two overlapping bribery statutes pertaining to public servants currently in Title 22 of the District code, D.C. Code § 22-712 (Bribery) and D.C. Code § 22-704 (Corrupt Influence). Under D.C. Code § 22-711(6), “independent contractors” are expressly excluded from the definition of “public servants” applicable to the current bribery statute, D.C. Code § 22-712. The corrupt influence statute, D.C. Code § 22-704, includes bribes of “any person acting in any capacity for the District of Columbia”, but does not specifically include or exclude independent contractors. The term “independent contractor” is not defined by current law but legislative history indicates that the “question of a whether a person is an independent contractor in the context of the bribery provision turns on the actual control exercised by the District of Columbia government over the contractor. Anyone who was actually under the control of the District government would not be an independent contractor.”<sup>86</sup> This statement in the

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<sup>85</sup> D.C. Code § 1-1161.01(6) (defining candidate as a person seeking public office whether or not they are elected or nominated).

<sup>86</sup> Judiciary Committee, Report on Bill No. 4-193, the D.C. Theft and White Collar Crime Act of 1982, at 79.

legislative history seemingly allows that some independent contractors could be covered by the bribery statute if they are under control of the District government but does not provide clear guidance on when an independent contractor is covered under the current bribery statute.<sup>87</sup> In contrast, the revised solicitation or acceptance of a bribe by a public servant statute does not expressly include or exclude “independent contractors” in the definition of public servants covered under the offense. Rather, the revised solicitation or acceptance of a bribe by a public servant statute covers independent contractors who satisfying the definition’s requirement that the person perform a function of the District government or a court of the District of Columbia and excludes independent contractors who do not perform such a function. By relying on the statutory requirement that a public servant perform a function of the District government or a function of the District of Columbia Courts, the revised solicitation or acceptance of a bribe by a public servant statute avoids confusion regarding whether a person who is generally deemed to be an independent contractor but is performing a function of the government or a court is covered by the statute. This change closes a potential gap in liability and improves the overall clarity and consistency of District law.

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

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<sup>87</sup> For example, court reporters in the District of Columbia courts are independent contractors who perform a function of the courts at the direction of the courts when transcribing court hearings and would thus, arguably, be under the control of the courts while performing that function. Third-party inspectors are also independent contractors, who perform a function of the government when hired as inspectors by private parties through a government third party inspector program, but are not as clearly under the direct control of the government when performing that function.

**§ 22A-4103. Unlawful compensation or gratuity to a public servant.**

- (a) *Offense.* An actor commits unlawful compensation or gratuity to a public servant when the actor:
- (1) Knowingly offers, gives, or agrees to give any personal pecuniary benefit, directly or indirectly, to a public servant or candidate for elective office;
  - (2) With intent that the personal pecuniary benefit be compensation or gratuity for the public servant's past or future:
    - (A) Performance of an official act or official duty;
    - (B) Failure to perform an official duty;
    - (C) Violation of a law relating to the public servant's office or employment in a manner that substantially threatens the public trust; or
    - (D) Assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal in a matter in which the public servant is likely to have a discretionary function to perform.
- (b) *Exclusions.* An actor does not commit an offense under this section when the personal pecuniary benefit is, in fact:
- (1) Salary, fees, gratuities, or other compensation authorized by law;
  - (2) A campaign contribution that is not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(2)(A)-(a)(2)(D); or
  - (3) A trivial benefit that involves no substantial risk of undermining official impartiality.
- (c) *Penalties.*
- (1) Unlawful compensation to a public servant is a Class A misdemeanor.
  - (2) *Merger.* A conviction for unlawful compensation or gratuity to a public servant shall merge with a conviction for bribery of a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (d) *Definitions.* In this section the term:
- (1) "Candidate" has the same meaning as provided in D.C. Code § 1-1161.01(6); and
  - (2) "Law relating to the public servant's office or employment" means any District law that specifically applies to a public servant in their official role as a public servant and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

***Explanatory Note.*** *The revised unlawful compensation or gratuity to a public servant offense prohibits offering, giving, or agreeing to give compensation or gratuities to public servants on account of their work as public servants even when the compensation or*

*gratuity does not constitute a bribe intended to influence the public servant’s future conduct. There are no penalty gradations and a conviction for unlawful compensation or gratuity to a public servant merges with a conviction for bribery of a public servant when arising out of the same act or course of conduct. The revised unlawful compensation or gratuity to a public servant statute is a new offense that closes gaps in the District’s public corruption laws.*

Subsection (a) specifies the prohibited conduct for the revised unlawful compensation or gratuity to a public servant offense. Paragraph (a)(1) requires that the actor “knowingly offers, gives, or agrees to give a personal pecuniary benefit directly, or indirectly, to a public servant or candidate for elective office.” “Knowingly” is defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements in (a)(1) and after, unless and until another mental state is specified. Here, the knowingly culpable mental state means the actor must be practically certain that they are offering, giving, or agreeing to give a personal pecuniary benefit to a public servant or candidate for elective office. “Personal pecuniary benefit”<sup>88</sup> and “public servant”<sup>89</sup> are defined terms in § 22A-101. “Candidate” is a defined term with the same meaning specified in D.C. Code § 1-1161.06(6).<sup>90</sup>

Paragraph (a)(2) specifies that the actor must offer, give, or agree to give the personal pecuniary benefit “with intent that the personal pecuniary benefit be compensation or gratuity” for any of the conduct specified in subparagraphs (a)(2)(A)-(a)(2)(D) related to the actor’s role as a public servant. Unlike the bribery of a public servant statute, there is no requirement for an intent to form a *quid pro quo* agreement. Rather, offering, giving, or agreeing to give the personal pecuniary benefit as compensation or gratuity without any prior agreement or future expectation with respect to the conduct on the part of the public servant is sufficient. “Intent” is a defined term in RCC § 22A-206 that here means the actor was practically certain that the personal pecuniary benefit was given as compensation or gratuity for the conduct specified in (a)(2)(A)-(a)(2)(D). Per the rule in § 22A-205, the

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<sup>88</sup> “Personal pecuniary benefit” means any personal benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain or advantage. The term “personal benefit” within the definition of “personal pecuniary benefit” is also a defined term in § 22A-101.

<sup>89</sup> “Public servant” means: (A) Any officer, employee, or other person who performs a function of the District government including jurors; (B) Any person, other than a witness, who performs a function of a court of the District of Columbia; or (C) Any person elected, nominated for appointment, or appointed to be a public servant.

<sup>90</sup> “Candidate” means an individual who seeks election to public office, whether or not the individual is nominated or elected. An individual deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual: (A) Obtained or authorized any other person to obtain nominating petitions to qualify the individual for election to public office; (B) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about the individual’s election to public office; or (C) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed to be a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek election to public office.

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. Thus, it is not necessary to prove that the personal pecuniary benefit was actually compensation or gratuity for one of the reasons stated in subparagraphs (a)(2)(A)-(a)(2)(D) only that the actor was practical certain that it was compensation or gratuity for one of the enumerated types of conduct.<sup>91</sup>

Subparagraphs (a)(2)(A)-(a)(2)(D) provide four enumerated past or future acts by a public servant for which the actor is offering, giving, or agreeing to give compensation or a gratuity. The four types of enumerated acts are: (1) performance of an official act or official duty; (2) failure to perform an official duty; (3) violation of a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust; or (4) assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal in a matter in which the public servant is likely to have a discretionary function to perform.<sup>92</sup> The terms “official act”<sup>93</sup> and “official duty”<sup>94</sup> are defined terms in § 22A-101. The phrase “law relating to the public servant’s office or employment” is a defined term in subsection (d) of the offense.<sup>95</sup>

Subsection (b) establishes three exclusions from liability for conduct that otherwise falls under subsection (a). First, paragraph (b)(1) excludes from liability offering, giving, or agreeing to give a benefit that constitutes salary, fees, gratuities, or other compensation authorized by law. Paragraph (b)(2) excludes from liability campaign contributions that are

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<sup>91</sup> For example, an actor gives a public servant a sum of money thanking the public servant for voting in favor of a particular bill not realizing the public servant was absent from the vote. In that case, the money would not actually be gratuity to the public servant for voting in favor of the bill because the public servant was absent and did not perform the act linked to the gratuity. Nevertheless, the actor’s conduct would still fall within the statute because they believed to a practical certainty that they were giving a gratuity for voting in favor of the bill.

<sup>92</sup> *E.g.*, A public servant is responsible for awarding contracts through a competitive bidding process to businesses to provide city services. The public servant drafts the bid on behalf of one of the bidding businesses to include provisions the public servant knows are critical so that the business has the most competitive bid and wins the contract. As a thank you for their assistance, the business gives the public servant money. Because the public servant had a discretionary function to perform in the bidding process, providing a gratuity to the public servant falls within the statute. If another public servant not connected to the bidding process helped draft the bid, however, the statute would not be violated by gifting them a gratuity. For example, a public servant employed in parking enforcement for the District who has no connection to the agency awarding the bid.

<sup>93</sup> “Official act” means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of a public servant in their official capacity.

<sup>94</sup> “Official duty” means any action a public servant is required to perform that does not involve an exercise of discretion on the part of the public servant.

<sup>95</sup> *E.g.*, the various codes of conduct referenced in D.C. Code § 1-1161.01(7) contain laws pertaining to the public servant’s office or employment. Some violations of those laws substantially threaten the public trust while others do not. To fall within the revised statute, the violation of a law pertaining to a public servant’s office of employment must be done in a manner that substantially threatens the public trust and not a mere technical violation. For example, the Council Code of Conduct requires employees to obtain the approval of his or her employer before engaging in outside employment. The mere failure to obtain supervisor approval, though a violation of the code of conduct, is generally not the type of violation done in a manner that substantially threatens public trust. In contrast, violations of rules pertaining to conflicts of interest, use of government resources, and disclosure of confidential information are much more likely to be done in a manner that substantially threatens the public trust.

not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in subparagraphs (a)(2)(A)-(a)(2)(D).<sup>96</sup> Finally, paragraph (b)(3) excludes from liability personal benefits that are trivial benefits and involve no substantial risk of undermining official impartiality.<sup>97</sup>

Subsection (c) specifies the penalty classification for unlawful compensation or gratuity to a public servant and establishes a merger provision. Paragraph (c)(1) establishes that unlawful compensation or gratuity to a public servant is a Class A misdemeanor. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.] Paragraph (c)(2) states that a conviction for unlawful compensation or gratuity to a public servant shall merge with a conviction for bribery of a public servant when the offenses arise out of the same act or course of conduct and provides that the rules of priority in RCC § 22A-214 govern the merger.

Subsection (d) defines the term “candidate” by cross-referencing another section in District code<sup>98</sup> and defines the term “law relating to a public servant's office or employment” for the offense. The term “law relating to a public servant's office or employment” means any District law that specifically applies to the public servant in their official role and that directly or indirectly: (A) imposes a duty on the public servant; or (B) governs the conduct of the public servant.

***Relation to Current District Law.*** *The revised unlawful compensation or gratuity to a public servant statute changes District law in one main way.*

The revised unlawful compensation or gratuity to a public servant statute prohibits providing personal pecuniary benefits to public servants as compensation or gratuity even

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<sup>96</sup> *E.g.*, Councilmember A is a strong supporter of electric vehicle infrastructure and sponsored a bill that provided money for more electric vehicle infrastructure in the District. Person B provides Councilmember A with a large campaign contribution in their next election as a thank you for the councilmember’s sponsorship of the bill but does not seek an agreement or understanding that Councilmember A will perform any other official acts because of the campaign contribution. Because the campaign contribution was not made, or intended to be made, in exchange for a clear and unambiguous promise that Councilmember A engage in any particular conduct, the campaign contribution would not run afoul of the revised unlawful compensation or gratuity to a public servant statute. Excluding such campaign contributions addresses First Amendment speech concerns. *See McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 192, (2014) (“Any regulation must instead target what we have called ‘*quid pro quo*’ corruption or its appearance. That Latin phrase captures the notion of a direct exchange of an official act for money. The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. Campaign finance restrictions that pursue other objectives, we have explained, impermissibly inject the Government into the debate over who should govern.”) (internal citations omitted). Outside the context of campaign contributions, the revised unlawful compensation or gratuity to a public servant statute requires a nexus to the public servant’s official conduct but not an explicit *quid pro quo*.

<sup>97</sup> Items such as “gift cards, lunches, plaques, books, framed photos, or the like—that may be given as a token of appreciation after the official act” are examples of trivial benefits that would not undermine impartiality. *Snyder v. United States*, 603 U.S. 1, 5 (2024); *see also id.* at 6 (explaining: “Some gratuities can be problematic. Others are commonplace and might be innocuous. A family gives a holiday tip to the mail carrier. Parents send an end-of-year gift basket to their child's public-school teacher. A college dean gives a college sweatshirt to a city council member who comes to speak at an event. A state legislator's neighbor drops off a bottle of wine to congratulate her for her work on a new law.”). This exclusion ensures that giving, offering, or agreeing to offer benefits that have no risk of substantially undermining official impartiality do not cause a person to run afoul of the statute.

<sup>98</sup> D.C. Code § 1-1161.01(6).

when the personal pecuniary benefit does not constitute a bribe intended to influence the public servant’s future conduct through a *quid pro quo*. The current corrupt influence statute in D.C. Code § 22-704 prohibits corruptly giving any money, or other bribe, present, reward, promise, contract obligation, or security for the payment of any money present, reward, or thing of value to certain government officials for enumerated reasons. There is no DCCA case law establishing whether the terms “present” or “reward” are meant to cover unlawful gratuities short of bribes. However, both the legislative history<sup>99</sup> and a recent Supreme Court decision<sup>100</sup> interpreting a federal bribery statute suggest that the corrupt influence statute is a bribery statute, which requires a corrupt state of mind not required to satisfy an unlawful compensation or gratuity statute prohibiting compensation or gratuity without any intent to influence the official conduct of a public servant.

The main distinction between current and revised bribery statutes and the revised unlawful compensation or gratuity statutes is the former statutes require a *quid pro quo*. Although a *quid pro quo* is an important element of bribery, providing personal pecuniary benefits to public servants without a *quid pro quo* can often be corrupt or cause the appearance of corruption and undermine faith in our public institutions. For example, a builder gives a city inspector \$10,000 as a thank you for the inspector giving the builder a passing grade in inspection. There is no evidence that the payment was provided so that the inspector would give the builder a passing grade on that inspection. Nevertheless, the payment of \$10,000 to a city inspector by someone subject to their inspection is culpable because it undermines faith in the impartiality of the city inspector and in the outcome of the inspection being performed, as well as in the fairness of future inspections. Most states and the federal government prohibit forms of compensation and gratuities to public servants that do not constitute bribes because such compensation and gratuities create a clear conflict of interest that erodes public trust.<sup>101</sup> The District has a strong interest in preserving the public trust by prohibiting significant compensation or gratuities for conduct by public servants. This change improves the clarity, consistency, and proportionality of District law.

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<sup>99</sup> 74 Cong. Ch. 87, February 26, 1936, 49 Stat. 1143 (preamble stating “An Act to define the crime of bribery and provide for its punishment”).

<sup>100</sup> *Snyder v. United States*, 603 U.S. 1 (2024) (holding § 18 U.S.C. 666(a)(1)(B) is a bribery statute that does not criminalize unlawful gratuities despite the inclusion of the term “reward” in the statute).

<sup>101</sup> The Supreme Court recently explained: “[G]ratuities after the official act are not the same as bribes before the official act. After all, unlike gratuities, bribes can corrupt the official act—meaning that the official takes the act for private gain, not for the public good. That said, gratuities can sometimes also raise ethical and appearance concerns. For that reason, Congress, States, and local governments have long regulated gratuities to public officials.” *Snyder v. United States*, 603 U.S. 1, 6, (2024).

**§ 22A-4104. Solicitation or acceptance of unlawful compensation or gratuity by a public servant.**

- (a) *Offense.* An actor commits solicitation or acceptance of unlawful compensation or gratuity by a public servant when the actor:
  - (1) Is, in fact, a public servant or candidate for elective office;
  - (2) Knowingly solicits, demands, accepts, or agrees to accept any personal pecuniary benefit from another person;
  - (3) With intent that the personal pecuniary benefit be compensation or gratuity for the public servant's past or future:
    - (A) Performance of an official act or official duty;
    - (B) Failure to perform an official duty;
    - (C) Violation of a law relating to the public servant's office or employment in a manner that substantially threatens the public trust; or
    - (D) Assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal in a matter in which the actor has a discretionary function to perform.
- (b) *Exclusions.* An actor does not commit an offense under this section when the personal pecuniary benefit is:
  - (1) Salary, fees, gratuities, or other compensation authorized by law;
  - (2) A campaign contribution that is not made in exchange for a clear and unambiguous promise engage in any of the conduct specified in (a)(3)(A)-(a)(3)(D); or
  - (3) A trivial benefit that involves no substantial risk of undermining official impartiality.
- (c) *Penalty.*
  - (1) Solicitation or acceptance of unlawful compensation or gratuity by a public servant is a Class A misdemeanor.
  - (2) *Merger.* A conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant shall merge with a conviction for solicitation or acceptance of a bribe by a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (d) *Definitions.* In this section the term:
  - (1) "Candidate" has the same meaning as provided in D.C. Code § 1-1161.01(6); and
  - (2) "Law relating to the public servant's office or employment" means any District law that specifically applies to the public servant acting in their role as a public servant and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

***Explanatory Note.** The revised solicitation or acceptance of unlawful compensation or gratuity by a public servant offense prohibits public servants from soliciting or accepting compensation or gratuities on account of their work as public servants even when the compensation or gratuity does not constitute a bribe intended to influence the public servant’s future conduct. There are no penalty gradations for the offense and a conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant merges with a conviction for solicitation or acceptance of a bribe by a public servant when arising out of the same act or course of conduct. The revised solicitation of unlawful compensation or gratuity by a public servant statute is a new offense that closes gaps in the District’s public corruption laws.*

Subsection (a) specifies the prohibited conduct for the revised solicitation or acceptance of unlawful compensation or gratuity by a public servant offense. Paragraph (a)(1) requires that the actor is, in fact, a public servant or candidate for elective office. “Public servant” is a defined term in § 22A-101<sup>102</sup> and “candidate”<sup>103</sup> is a defined term in section (d) of the offense with the same meaning specified in D.C. Code § 1-1161.06(6). “In fact,” is a defined term in RCC § 22A-207 that indicates there is no culpable mental state requirement as to the fact that the actor is a public servant or candidate for elective office.

Paragraph (a)(2) requires that the actor “knowingly solicits, demands, accepts, or agrees to accept a personal pecuniary benefit directly, or indirectly, from another person. “Knowingly” is defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements in (a)(1) until another mental state is specified. Here, the knowingly culpable mental state means the actor must be practically certain that they are soliciting, demanding, accepting, or agreeing to accept a personal pecuniary benefit from another person. “Personal pecuniary benefit” is a defined term in § 22A-101.<sup>104</sup>

Paragraph (a)(3) specifies that the actor must solicit, demand, accept, or agree to accept the personal benefit “with intent that the personal pecuniary benefit be compensation or gratuity” for any of the conduct specified in subparagraphs (a)(3)(A)-(a)(3)(D) related to

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<sup>102</sup> “Public servant” means: (A) Any officer, employee, or other person who performs a function of the District government including jurors; (B) Any person, other than a witness, who performs a function of a court of the District of Columbia; or (C) Any person elected, nominated for appointment, or appointed to be a public servant.

<sup>103</sup> “Candidate” means an individual who seeks election to public office, whether or not the individual is nominated or elected. An individual deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual: (A) Obtained or authorized any other person to obtain nominating petitions to qualify the individual for election to public office; (B) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about the individual’s election to public office; or (C) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed to be a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek election to public office.

<sup>104</sup> “Personal pecuniary benefit” means any personal benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain or advantage. The term “personal benefit” within the definition of “personal pecuniary benefit” is also a defined term in § 22A-101.

the actor’s conduct in their role as a public servant. Unlike the solicitation or acceptance of a bribe by a public servant statute, there is no requirement for an intent to form a *quid pro quo* agreement. Rather, soliciting, demanding, accepting, or agreeing to accept the personal pecuniary benefit as compensation or gratuity without any prior agreement or future expectation with respect to the conduct on the part of the public servant is sufficient. “Intent” is a defined term in RCC § 22A-206 that here means the actor was practically certain that the personal pecuniary benefit was given as compensation or gratuity for the conduct specified in (a)(3)(A)-(a)(3)(D). Per the rule in § 22A-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. Thus, it is not necessary to prove the personal pecuniary benefit was actually compensation or gratuity given for one of the reasons stated in subparagraphs (a)(3)(A)-(a)(3)(D). Rather, it is sufficient to establish that the actor was practically certain that the personal pecuniary benefit was compensation or gratuity for the specified conduct.

Subparagraphs (a)(3)(A)-(a)(3)(D) provide the four enumerated acts by the actor in their role as public servant for which the actor is soliciting, demanding, accepting, or agreeing to accept a personal pecuniary benefit with intent that it be compensation or gratuity. The four types of enumerated acts by the actor are the past or future: (1) performance of an official act or official duty; (2) failure to perform an official duty; (3) violation of a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust; or (4) assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal in a matter in which the public servant is likely to have a discretionary function to perform.<sup>105</sup> The terms “official act” and “official duty” are defined terms in § 22A-101. The phrase “law relating to the public servant’s office or employment” is a defined term in section (d) of the offense.<sup>106</sup>

Subsection (b) establishes three exclusions from liability for conduct that otherwise falls under subsection (a). First, paragraph (b)(1) excludes from liability soliciting,

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<sup>105</sup> *E.g.*, A public servant is responsible for awarding contracts through a competitive bidding process to businesses to provide city services. The public servant offers to draft the bid on behalf of one of the bidding businesses to include provisions the public servant knows are critical so that the business has the most competitive bid and wins the contract. The public servant solicits or accepts payment as gratuity for drafting the bid. Because the public servant had a discretionary function to perform in the bidding process, asking for payment to assist the business in putting forth a competitive bid falls within the statute. If another public servant not connected to the bidding process helped draft the bid, however, the statute would not be violated by the solicitation of compensation or gratuity. For example, a public servant employed in parking enforcement for the District who has no connection to the agency awarding the bid and offers to help their friend with drafting for a fee would not run afoul of this sub-paragraph.

<sup>106</sup> *E.g.*, the various codes of conduct referenced in D.C. Code § 1-1161.01(7) contain laws pertaining to the public servant’s office or employment. Some violations of those laws substantially threaten the public trust while others do not. To fall within the revised statute, the violation of a law pertaining to a public servant’s office of employment must be done in a manner that substantially threatens the public trust and not a mere technical violation. For example, the Council Code of Conduct requires employees to obtain the approval of his or her employer before engaging in outside employment. The mere failure to obtain supervisor approval, though a violation of the code of conduct, is generally not the type of violation done in a manner that substantially threatens public trust. In contrast, violations of rules pertaining to conflicts of interest, use of government resources, and disclosure of confidential information are much more likely to be done in a manner that substantially threatens the public trust.

demanding, accepting, or agreeing to accept a personal pecuniary benefit that constitutes salary, fees, gratuities, or other compensation authorized by law. Paragraph (b)(2) excludes from liability campaign contributions that are not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(3)(A)-(a)(3)(D).<sup>107</sup> Finally, paragraph (b)(3) excludes from liability “a trivial benefit that involves no substantial risk of undermining official impartiality.”<sup>108</sup>

Subsection (c) provides the penalty classification for the solicitation or acceptance of unlawful compensation or gratuity offenses and establishes a merger provision for the offense. Paragraph (c)(1) establishes that solicitation or acceptance of unlawful compensation or gratuity by a public servant is a class A misdemeanor. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.] Paragraph (c)(2) states that a conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant shall merge with a conviction for solicitation or acceptance of a bribe by a public servant when the offenses arise out of the same act or course of conduct. Paragraph (c)(2) also provides that the rules of priority in RCC § 22A-214 govern the merger.

Subsection (d) defines the term “candidate” by cross-referencing another section in District code<sup>109</sup> and defines the term “law relating to a public servant's office or employment” for the offense. The term “law relating to a public servant's office or employment” means any District law that specifically applies to the public servant in their official role and that directly or indirectly: (A) imposes a duty on the public servant; or (B) governs the conduct of the public servant.

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<sup>107</sup> E.g., Councilmember A is a strong supporter of electric vehicle infrastructure and sponsored a bill that provided money for more electric vehicle infrastructure in the District. Councilmember A solicits a large campaign contribution in their next election from a supporter of electric vehicle infrastructure due to the councilmember’s support of the bill but does not seek an agreement or understanding that Councilmember A will perform any other official acts because of the campaign contribution. Because the campaign contribution was not solicited or accepted with intent that it be in exchange for a clear and unambiguous promise that Councilmember A engage in any particular conduct, the solicitation of the campaign contribution would not run afoul of the revised unlawful compensation or gratuity to a public servant statute. Excluding such campaign contributions addresses First Amendment speech concerns. *See McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 192, (2014) (“Any regulation must instead target what we have called ‘quid pro quo’ corruption or its appearance. That Latin phrase captures the notion of a direct exchange of an official act for money. The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. Campaign finance restrictions that pursue other objectives, we have explained, impermissibly inject the Government into the debate over who should govern.”) (internal citations omitted). Outside the context of campaign contributions, the revised unlawful compensation or gratuity to a public servant statute requires a nexus to the public servant’s official conduct but not an explicit *quid pro quo*.

<sup>108</sup> Items such as “gift cards, lunches, plaques, books, framed photos, or the like—that may be given as a token of appreciation after the official act” are examples of trivial benefits that would not undermine impartiality. *Snyder v. United States*, 603 U.S. 1, 5 (2024); *see also id.* at 6 (explaining: “Some gratuities can be problematic. Others are commonplace and might be innocuous. A family gives a holiday tip to the mail carrier. Parents send an end-of-year gift basket to their child's public-school teacher. A college dean gives a college sweatshirt to a city council member who comes to speak at an event. A state legislator's neighbor drops off a bottle of wine to congratulate her for her work on a new law.”). This exclusion ensures that soliciting or accepting benefits that have no risk of substantially undermining official impartiality do not cause a person to run afoul of this statute.

<sup>109</sup> D.C. Code § 1-1161.01(6).

*Relation to Current District Law.* The revised solicitation or acceptance of unlawful compensation or gratuity statute changes District law in one main way.

The revised unlawful solicitation or acceptance of compensation or gratuity statute prohibits public servants from soliciting or accepting personal pecuniary benefits as compensation or gratuity even when the personal pecuniary benefit does not constitute a bribe intended to influence the public servant’s future conduct. The current corrupt influence statute in D.C. Code § 22-704 prohibits public servants from corruptly receiving any money, or other bribe, present, reward, promise, contract obligation, or security for the payment of any money, present, reward, or thing of value with intent to be influenced. There is no DCCA case law establishing whether the terms “present” or “reward” are meant to cover unlawful gratuities short of bribes. However, both the legislative history<sup>110</sup> and a recent Supreme Court decision<sup>111</sup> interpreting a federal bribery statute suggest that the corrupt influence statute is a bribery statute which requires a corrupt state of mind not required to satisfy an unlawful compensation or gratuity statute prohibiting compensation or gratuities without an agreement to influence the official conduct of a public servant.

The main distinction between current and revised bribery statutes and the revised unlawful compensation or gratuity statutes is the former statutes require a *quid pro quo*. Although a *quid pro quo* is an important element of bribery statutes for the reasons stated above, soliciting or accepting a personal pecuniary benefit as a public servant without a *quid pro quo* can often be corrupt or cause the appearance of corruption and undermine faith in our public institutions. For example, a city inspector asks for \$10,000 from a builder as a “thank you” for the inspector giving the builder a passing grade in inspection. There is no evidence that the solicitation was made in exchange for the inspector giving the builder a passing grade on that inspection. Nevertheless, the request for \$10,000 from a builder by a city inspector is culpable because it undermines faith in the impartiality of the city inspector and in the outcome of the inspection being performed, as well as in the fairness of future inspections. Most states and the federal government prohibit forms of compensation and gratuities to public servants that do not constitute bribes because such compensation and gratuities create a clear conflict of interest that erodes public trust.<sup>112</sup> The District has a strong interest in preserving the public trust by prohibiting significant compensation or gratuities for conduct by public servants. This change improves the clarity, consistency, and proportionality of District law.

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<sup>110</sup> 74 Cong. Ch. 87, February 26, 1936, 49 Stat. 1143 (preamble stating “An Act to define the crime of bribery and provide for its punishment”).

<sup>111</sup> *Snyder v. United States*, 603 U.S. 1 (2024) (holding § 18 U.S.C. 666(a)(1)(B) is a bribery statute that does not criminalize unlawful gratuities despite the inclusion of the term “reward” in the statute).

<sup>112</sup> The Supreme Court recently explained: “[G]ratuities after the official act are not the same as bribes before the official act. After all, unlike gratuities, bribes can corrupt the official act—meaning that the official takes the act for private gain, not for the public good. That said, gratuities can sometimes also raise ethical and appearance concerns. For that reason, Congress, States, and local governments have long regulated gratuities to public officials.” *Snyder v. United States*, 603 U.S. 1, 6, (2024).

**§ 22A-4105. Misuse of official information.**

- (a) *Offense.* An actor commits misuse of official information when the actor:
  - (1) Is, in fact, a public servant;
  - (2) Knowingly, and in reliance on non-public information available to the actor in their role as a public servant, either:
    - (A) Acquires or aids another in acquiring a pecuniary interest in property that may be affected by the non-public information; or
    - (B) Transfers or aids another in transferring a pecuniary interest in property that may be affected by the non-public information;
  - (3) With intent to obtain a personal pecuniary benefit for the actor.
- (b) *Penalty.* Misuse of public information is a Class A misdemeanor.
- (c) *Defenses.* It is a defense to this section that the pecuniary benefit involved is a trivial benefit that involves no substantial risk of undermining public trust.

*Explanatory Note.* The revised misuse of official information offense prohibits public servants from using or helping another use non-public information to obtain a personal pecuniary benefit. There are no penalty gradations for the offense. The misuse of official information offense is a new offense that closes a gap in District law.

Subsection (a) specifies the prohibited conduct for the revised misuse of official information offense. Paragraph (a)(1) requires that the actor is, in fact, a public servant. “Public servant” is a defined term in § 22A-101.<sup>113</sup> “In fact,” is a defined term in RCC § 22A-207 that indicates there is no culpable mental state requirement as to the fact that the actor is a public servant.

Paragraph (a)(2) requires that the actor “knowingly, and in reliance on non-public information available to the actor in their role as a public servant” engages in one of two types of conduct specified in (a)(2)(A)-(a)(2)(B). “Knowingly” is defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements in (a)(2), unless and until another mental state is specified. Here, the knowingly culpable mental state means the actor must be practically certain that they are relying on non-public information they acquired in their role as a public servant to engage in one of the two types of conduct specified in (a)(2)(A)-(a)(2)(B).

Subparagraphs (a)(2)(A)-(a)(2)(B) provide the two alternative types of conduct a public servant actor must engage in to establish the offense. First, subparagraph (a)(2)(A) establishes as one form of prohibited conduct, acquiring or aiding another in acquiring a pecuniary interest in property that may be affected by the non-public information referenced in the first part of (a)(2). Alternatively, subparagraph (a)(2)(B) establishes as another form of prohibited conduct, transferring or aiding another in transferring a pecuniary interest in property that may be affected by the non-public information referenced in the first part of (a)(2). Per the rule in § 22A-207, the term “knowingly” from

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<sup>113</sup> “Public servant” means: (A) Any officer, employee, or other person who performs a function of the District government including jurors; (B) Any person, other than a witness, who performs a function of a court of the District of Columbia; or (C) Any person elected, nominated for appointment, or appointed to be a public servant.

(a)(2) applies to both elements in (a)(2)(A)-(a)(2)(B). Here, that means that the actor must be practically certain that that they are either acquiring or transferring a pecuniary interest in property that will be affected by the non-public information or aiding another in acquiring or transferring such an interest.

Paragraph (a)(3) requires as an additional element that the actor must engage in the conduct in (a)(2) “with the intent to obtain a personal pecuniary benefit for the actor or another person.” The term “personal pecuniary benefit” is a defined term in § 22A-101.<sup>114</sup> “Intent” is a defined term in § 22A-206 that here means the actor was practically certain that the conduct in (a)(2) would result in the actor or another person obtaining a personal pecuniary benefit. Per § 22A-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. Thus, it is not necessary to prove the actor or another person actually obtained a personal pecuniary benefit. Rather, the government need only show that the actor was practically certain that they would obtain a personal pecuniary benefit by engaging in the conduct proscribed in (a)(2).

Subsection (b) specifies the penalty classifications for the misuse of official information offense. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (c) establishes that it is a defense to this section that the personal pecuniary benefit is a trivial benefit that involves no substantial risk of undermining official impartiality.

***Relation to Current District law:*** *The revised misuse of official information offense changes District law in one main way.*

The RCC misuse of official information offense covers the acquisition of property for pecuniary benefit based on non-public information. Current District law does not criminalize using information not generally available to the public to acquire property and obtain a pecuniary benefit. The use of non-public information to acquire property and obtain a personal pecuniary benefit is analogous to insider trading and undermines public trust. The RCC establishes a new misuse of official information offense to cover the use of non-public information for private gain prior to the information being made available to the public for the same use. This change closes a possible gap in liability and improves the clarity of District law.

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<sup>114</sup> “Personal pecuniary benefit” means any personal benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain or advantage. The term “personal benefit” within the definition of “personal pecuniary benefit” is also a defined term in § 22A-101.

## Appendix A – Black Letter Text of Draft Revised Statutes

### § 22A-101. Definitions.

“Official act” means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of a public servant.

“Official duty” means any action a public servant is required to perform or refrain from that does not involve an exercise of discretion on the part of the public servant.

“Personal benefit” means any gain or advantage to the beneficiary personally, including a gain or advantage to any person or entity in whose welfare the beneficiary has a significant personal interest.

“Personal pecuniary benefit” means any personal benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain or advantage.

“Public servant” means:

- (A) Any officer, employee, or other person who performs a function of the District government;
- (B) Any person, other than a witness, who performs a function of a court of the District of Columbia including jurors and court-appointed neutrals; or
- (C) Any person elected, nominated for appointment, or appointed to be a public servant under paragraphs (A) or (B).

### § 22A-4101. Bribery of a public servant.

- (a) *Offense.* An actor commits bribery of a public servant when the actor:
  - (1) Knowingly offers, gives, or agrees to give any personal benefit, directly or indirectly, to a public servant or candidate for elective office;
  - (2) With intent that the personal benefit be in exchange for an agreement or understanding that the public servant or candidate for elective office will:
    - (A) Perform an official act;
    - (B) Fail to perform an official duty; or
    - (C) Violate a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust.
- (b) *Exclusions.* An actor does not commit an offense under this section when the personal benefit is, in fact:
  - (1) An advantage promised generally to a group or class of voters as a consequence of public measures which a public servant or candidate engages to support or oppose;
  - (2) Salary, fees, or other compensation authorized by law;

- (3) A campaign contribution that is not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(2)(A)-(a)(2)(C); or
  - (4) Concurrence in official action in the course of legitimate compromise among public servants.
- (c) *Penalty.*
- (1) Bribery of a public servant is a Class 7 felony.
  - (2) *Merger.* A conviction for bribery of a public servant shall merge with a conviction for unlawful compensation or gratuity to a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (d) *Definitions.* In this section, the term:
- (1) “Candidate” has the same meaning specified in D.C. Code § 1-1161.01(6); and
  - (2) “Law relating to a public servant's office or employment” means any District law that specifically applies to the public servant in their official role and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

**§ 22A-4102. Solicitation or acceptance of a bribe by a public servant.**

- (a) *Offense.* An actor commits solicitation or acceptance of a bribe by a public servant when the actor:
- (1) Is, in fact, a public servant or candidate for elective office;
  - (2) Knowingly solicits, demands, accepts, or agrees to accept any personal benefit, directly or indirectly, from another person;
  - (3) With intent that the personal benefit be in exchange for an agreement or understanding that the actor will:
    - (A) Perform an official act;
    - (B) Fail to perform an official duty; or
    - (C) Violate a law relating to the public servant’s office or employment in a manner that substantially threatens the public trust.
- (b) *Exclusions.* An actor does not commit an offense under this section when the personal benefit is, in fact:
- (1) An advantage promised generally to a group or class of voters as a consequence of public measures which a public servant or candidate engages to support or oppose;
  - (2) Salary, fees, or other compensation authorized by law;
  - (3) A campaign contribution that is not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(3)(A)-(a)(3)(C); or
  - (4) A trivial benefit that involves no substantial risk of undermining official impartiality.
- (c) *Penalty.*

- (1) Solicitation or acceptance of a bribe by a public servant is a Class 7 felony.
  - (2) *Merger*. A conviction for solicitation or acceptance of a bribe by a public servant shall merge with a conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (d) *Definitions*. In this section, the term:
- (1) “Candidate” has the same meaning specified in D.C. Code § 1-1161.01(6); and
  - (2) “Law relating to the public servant's office or employment” means any District law that specifically applies to a person in their role as a public servant and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

**§ 22A-4103. Unlawful compensation or gratuity to a public servant.**

- (e) *Offense*. An actor commits unlawful compensation or gratuity to a public servant when the actor:
- (1) Knowingly offers, gives, or agrees to give any personal pecuniary benefit, directly or indirectly, to a public servant or candidate for elective office;
  - (2) With intent that the personal pecuniary benefit be compensation or gratuity for the public servant’s past or future:
    - (A) Performance of an official act or official duty;
    - (B) Failure to perform an official duty;
    - (C) Violation of a law relating to the public servant's office or employment in a manner that substantially threatens the public trust; or
    - (D) Assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal in a matter in which the public servant is likely to have a discretionary function to perform.
- (f) *Exclusions*. An actor does not commit an offense under this section when the personal pecuniary benefit is, in fact:
- (1) Salary, fees, gratuities, or other compensation authorized by law;
  - (2) A campaign contribution that is not made in exchange for a clear and unambiguous promise to engage in any of the conduct specified in (a)(2)(A)-(a)(2)(D); or
  - (3) A trivial benefit that involves no substantial risk of undermining official impartiality.
- (g) *Penalties*.
- (1) Unlawful compensation to a public servant is a Class A misdemeanor.

- (2) *Merger.* A conviction for unlawful compensation or gratuity to a public servant shall merge with a conviction for bribery of a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (h) *Definitions.* In this section the term:
  - (1) “Candidate” has the same meaning as provided in D.C. Code § 1-1161.01(6); and
  - (2) “Law relating to the public servant's office or employment” means any District law that specifically applies to a public servant in their official role as a public servant and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

**§ 22A-4104. Solicitation or acceptance of unlawful compensation or gratuity by a public servant.**

- (e) *Offense.* An actor commits solicitation or acceptance of unlawful compensation or gratuity by a public servant when the actor:
  - (1) Is, in fact, a public servant or candidate for elective office;
  - (2) Knowingly solicits, demands, accepts, or agrees to accept any personal pecuniary benefit from another person;
  - (3) With intent that the personal pecuniary benefit be compensation or gratuity for the public servant’s past or future:
    - (A) Performance of an official act or official duty;
    - (B) Failure to perform an official duty;
    - (C) Violation of a law relating to the public servant's office or employment in a manner that substantially threatens the public trust; or
    - (D) Assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal in a matter in which the actor has a discretionary function to perform.
- (f) *Exclusions.* An actor does not commit an offense under this section when the personal pecuniary benefit is:
  - (1) Salary, fees, gratuities, or other compensation authorized by law;
  - (2) A campaign contribution that is not made in exchange for a clear and unambiguous promise engage in any of the conduct specified in (a)(3)(A)-(a)(3)(D); or
  - (3) A trivial benefit that involves no substantial risk of undermining official impartiality.
- (g) *Penalty.*
  - (1) Solicitation or acceptance of unlawful compensation or gratuity by a public servant is a Class A misdemeanor.

- (2) *Merger*. A conviction for solicitation or acceptance of unlawful compensation or gratuity by a public servant shall merge with a conviction for solicitation or acceptance of a bribe by a public servant when arising from the same act or course of conduct and the sentencing court shall follow the procedures specified in subsections (b) and (c) of RCC § 22A-214.
- (h) *Definitions*. In this section the term:
  - (1) “Candidate” has the same meaning as provided in D.C. Code § 1-1161.01(6); and
  - (2) “Law relating to the public servant's office or employment” means any District law that specifically applies to the public servant acting in their role as a public servant and that directly or indirectly:
    - (A) Imposes a duty on the public servant; or
    - (B) Governs the conduct of the public servant.

**§ 22A-4105. Misuse of official information.**

- (d) *Offense*. An actor commits misuse of official information when the actor:
  - (1) Is, in fact, a public servant;
  - (2) Knowingly, and in reliance on non-public information available to the actor in their role as a public servant, either:
    - (A) Acquires or aids another in acquiring a pecuniary interest in property that may be affected by the non-public information; or
    - (B) Transfers or aids another in transferring a pecuniary interest in property that may be affected by the non-public information;
  - (3) With intent to obtain a personal pecuniary benefit for the actor.
- (e) *Penalty*. Misuse of public information is a Class A misdemeanor.
- (f) *Defenses*. It is a defense to this section that the pecuniary benefit involved is a trivial benefit that involves no substantial risk of undermining public trust.