



Report #82
Illegal Dumping Offense and Related
Provisions

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This Report contains draft revisions and draft repeal recommendations for certain District criminal statutes. These draft revisions and repeal recommendations 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) statutory text for revised illegal dumping offenses; and (2) commentary on the draft statutory text.

The Report’s commentary on the revisions explains the meaning of each provision, considers whether existing District law would be changed by the provision, and, if so, explains why this change is being recommended.

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.ccrc.dc.gov.

Report #X – Illegal Dumping Offense and Related Provisions
Draft Revised Criminal Code (RCC) Text and Commentary
Corresponding D.C. Code statutes in {}

- § 8-901. Definitions. {D.C. Code § 8-901}
- § 8-902. Illegal Dumping. {D.C. Code § 8-902}
- § 8-903. Enforcement. {D.C. Code § 8-903}
- § 8-904. Bounty. {D.C. Code § 8-904}
- § 8-905. Civil Forfeitures. {D.C. Code § 8-905}
- § 8-906. Rules. {D.C. Code § 8-906}

§ 8-901. Definitions.

(1) “Actor” means a person accused of a criminal offense.

Explanatory Note. The term “actor” is generally used in RCC offenses to avoid the confusion that may arise from multiple references to a “person”. Use of the term “actor” is a drafting convention that is not intended to substantively affect any provision in the RCC.

The RCC definition of “actor” replaces the current definition of “actor” in D.C. Code § 22-3001(1),¹ applicable to provisions in Chapter 30, Sexual Abuse. The RCC definition of “actor” is used in numerous RCC provisions, including the revised illegal dumping statute.²

D.C. Code § 8-901 separately codifies the definition of “person” that is applicable to this definition of “actor”.

Relation to Current District Law. The RCC definition of “actor” is substantively identical to the statutory definition under current law,³ but, as stated above, consistently applies to all RCC offenses.

(2) “Disposes” means:

(A) Discharges, deposits, dumps, or places; or

(B) Allows, as an employer or manager, a subordinate to discharge, deposit, dump, or place.

Explanatory Note. The revised definition of “disposes” replaces the current definition of “disposes” in D.C. Code § 8-901,⁴ applicable to the current D.C. Code illegal dumping offense. The revised definition of “disposes” is used in the revised illegal dumping statute.⁵

“An employer or manager” would include an owner of a business or other entity. A “subordinate” can include an employee, as well as an agent or a contractor. However, the employer or manager must have supervisory or disciplinary authority over the employee, agent, or contractor.

Relation to Current District Law. The revised definition of “disposes” may change current District law in one way.

Subsection (B) of the revised definition codifies a narrow instance when allowing disposal is sufficient for “disposes”—when an employer or manager allows a subordinate to discharge, deposit, dump, or place. This subsection, read in conjunction with the revised illegal dumping offense, prohibits an employer or manager from allowing a subordinate to discharge, deposit, dump, or place waste in the District of Columbia. The current D.C. Code definition of “disposes”⁶

¹ D.C. Code § 22-3001(1) (“‘Actor’ means a person accused of any offense proscribed under this chapter.”).

² D.C. Code § 8-902.

³ D.C. Code § 22-3001(1) (“‘Actor’ means a person accused of any offense proscribed under this chapter.”).

⁴ D.C. Code § 8-901(1A) (“‘Dispose’ means to discharge, deposit, dump, or place any solid waste in the District of Columbia.”).

⁵ D.C. Code § 8-902.

⁶ D.C. Code § 8-901(1A) (“‘Dispose’ means to discharge, deposit, dump, or place any solid waste in the District of Columbia.”).

does not address allowing the disposal of waste. However, the current D.C. Code illegal dumping statute prohibits, in relevant part, “permit[ting]” the disposal of waste.⁷ The intended scope of “permit” is unclear and there is no DCCA case law on point. The plain language of “permit” encompasses businesses⁸ that permit employees to illegally dispose of waste, but also extends to individuals, such as married couples or neighbors,⁹ that permit their spouses or neighbors to illegally dispose of waste. Resolving this ambiguity, the revised illegal dumping statute, through the revised definition of “disposes”, narrows “permit[ting]” the disposal of waste to employers or managers who allow a subordinate to illegally dispose of waste. Outside of this narrow context, the revised illegal dumping statute does not criminalize permitting the illegal disposal of waste because it would lead to disproportionate penalties.¹⁰ This change improves the clarity, consistency, and proportionality of the revised statute.

Two other changes to the definition of “disposes” are clarificatory in nature and are not intended to substantively change District law.

First, the revised definition no longer refers to the disposal of “solid waste”. This requirement is codified directly into the revised illegal dumping offense,¹¹ rendering “solid waste” surplusage in the definition.¹² This change improves the clarity of the revised statute.

Second, the revised definition no longer refers to the disposal of waste “in the District of Columbia”. This requirement is codified directly into the revised offense. This change improves the clarity of the revised statute.

⁷ D.C. Code § 8-902(a).

⁸ It should be noted that both the current and revised illegal dumping statutes apply to entities other than businesses, such as trusts. D.C. Code § 8-901(5) (defining “person” as “any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or any other entity.”).

⁹ The commentary uses these hypotheticals—married couples and neighbors—because they seem somewhat plausible. However, the current D.C. Code illegal dumping statute does not require a relationship between the individuals or that they even know each other. Thus, the plain language reading of the statute includes an individual that permits a complete stranger to illegally dispose of waste.

¹⁰ It is a well-established legal principle that criminal liability for failing to act must be based on a legal duty to act, as opposed to a moral duty. *See, e.g., United States v. Sabhnani*, 599 F.3d 215, 237 (2d Cir. 2010) (“It is a long-established principle that criminal law generally regulates action, rather than omission, and that “[f]or criminal liability to be based upon a failure to act it must first be found that there is a duty to act—a legal duty and not simply a moral duty.”) (quoting Wayne R. LaFare, *Substantive Criminal Law* § 6.2 (2d ed. 2008)). Outside of employers and managers, the revised illegal dumping statute does not impose a legal duty on individuals or entities to stop illegal dumping. Other individuals and entities may not have the same authority as an employer or manager over a subordinate.

¹¹ As is discussed elsewhere in this commentary as a clarificatory change to current law, the revised illegal dumping statute uses the “waste”, as opposed to “solid waste”.

¹² The current D.C. Code definition of “disposes” specifies “solid waste”. D.C. Code § 8-901(1A) (“‘Dispose’ means to discharge, deposit, dump, or place any solid waste in the District of Columbia.”). However, the current D.C. Code illegal dumping offense also specifies “solid waste”. When the current definition of “disposes” is inserted into the current offense, the plain language reading, in relevant part, is “It shall be unlawful for any person to *discharge, deposit, dump, or place any solid waste in the District of Columbia* of solid waste”. “Solid waste” in the definition is surplusage. In contrast, when the revised definition of “disposes” is inserted into the revised illegal dumping offense, it reads “knowingly *discharges, deposits, dumps, or places* waste in the District of Columbia” and “knowingly allows, as an employer or manager, a subordinate to *discharge, deposit, dump, or place* waste in the District of Columbia”. As is discussed elsewhere in this commentary as a clarificatory change to current law, the revised illegal dumping statute uses the “waste”, as opposed to “solid waste”.

- (3) **“Hazardous waste” means any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics:**
- (A) **May cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating, reversible, illness;**
 - (B) **May pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; including, but not limited to, wastes which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste; or**
 - (C) **Is identified as hazardous waste in D.C. Mun. Regs. tit. 20, § 4261.3, or is established by the Mayor as hazardous waste.**

Explanatory Note. The revised definition of “hazardous waste” replaces the current definition of “hazardous waste” in D.C. Code § 8-901,¹³ applicable to the current D.C. Code illegal dumping offense. The revised definition of “hazardous waste” is used in the revised illegal dumping statute.¹⁴

Relation to Current District Law. The revised definition of “hazardous waste” may change current District law in one way.

In the revised definition, identification by D.C. Mun. Regs. tit. 20, § 4261.3, or by the Mayor, is an independent basis for determining whether a substance is “hazardous waste”. The current D.C. Code illegal dumping offense defines “hazardous waste” as any waste or combination of wastes “which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may” harm, or threaten to harm, human health or the environment.¹⁵ The plain language reading of the current definition suggests that, even if a

¹³ D.C. Code § 8-901(2A):

‘Hazardous waste’ means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may:

- (A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, reversible, illness; or
- (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

¹⁴ D.C. Code § 8-902.

¹⁵ D.C. Code § 8-901(2A):

‘Hazardous waste’ means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may:

substance harmed, or threatened to harm, human health or the environment, it would only qualify as “hazardous waste” if established as such by the Mayor. Such a reading would likely unduly narrow the scope of “hazardous waste”. In addition, there does not appear to be a list of substances identified by the Mayor as “hazardous waste”. However, D.C. Mun. Regs. tit. 20, § 4261.3 adopts, for the current D.C. Code illegal dumping statute, hazardous wastes identified in federal regulations.¹⁶ There is no DCCA case law interpreting the current D.C. Code definition of “hazardous waste”. Resolving this ambiguity, the revised definition of “hazardous waste” makes identification by D.C. Mun. Regs. tit. 20, § 4261.3 or by the Mayor an independent basis for determining whether a substance is “hazardous waste”. If a substance harms, or threatens to harm, human health or the environment, it would qualify as “hazardous waste” under subsection (A) or subsection (B) of the revised definition, regardless of whether it’s identified by D.C. Mun. Regs. tit. 20, § 4261 or the Mayor as “hazardous waste”. This change improves the clarity and consistency of the revised illegal dumping statute.

(4) “In fact” shall have the same meaning as provided in § 22A-207.

Explanatory Note. The definition of “in fact” is addressed in the Commentary accompanying RCC § 22A-207. The revised definition of “in fact” appears in numerous RCC provisions, including the revised illegal dumping offense¹⁷ and applicable civil forfeitures statute.¹⁸

(5) “Intentionally”, and other parts of speech, including “intent”, shall have the same meaning as provided in § 22A-206.

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- (A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, reversible, illness; or
 - (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

¹⁶ D.C. Mun. Regs. tit. 20, § 4261.3 states (emphasis added):

Hazardous wastes under 40 C.F.R. Part 261 are also hazardous wastes under:

- (a) Section 3 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code § 8-1302(2);
- (b) Section 2(a) of the *Illegal Dumping Enforcement Amendment Act of 1998*, D.C. Official Code § 8-901(2A); and
- (c) Section 2(a) of the *Solid Waste Facility Permit Amendment Act of 1998*, D.C. Official Code § 8-1051(20).

40 C.F.R. Part 261 contains federal regulations pertaining to the generating, transporting, treatment, storage, and disposal of hazardous waste. 40 C.F.R. § 261.1(a) (“This part identifies those solid wastes which are subject to regulation as hazardous wastes under parts 262 through 265, 268, and parts 270, 271, and 124 of this chapter and which are subject to the notification requirements of section 3010 of RCRA [federal Resource Conservation and Recovery Act].”).

¹⁷ D.C. Code § 8-902.

¹⁸ D.C. Code § 8-905.

Explanatory Note. The definition of “intentionally” is addressed in the Commentary accompanying RCC § 22A-206. The revised definition of “intentionally” appears in numerous RCC provisions, including the revised illegal dumping statute¹⁹ and applicable civil forfeitures statute.²⁰

- (6) “Knowingly”, and other parts of speech, including “know”, “known”, “knows”, “knowing”, and “knowledge”, shall have the same meaning as provided in § 22A-206.**

Explanatory Note. The definition of “knowingly” is addressed in the Commentary accompanying RCC § 22A-206. The revised definition of “knowingly” appears in numerous RCC provisions, including the revised illegal dumping statute.²¹

- (7) “Mayor” means the Mayor of the District of Columbia.**

Explanatory Note. The revised definition of “Mayor” replaces the current definition of “Mayor” in D.C. Code § 8-901,²² applicable to the current D.C. Code illegal dumping offense. The revised definition of “Mayor” is used in all revised illegal dumping statutes.²³

Relation to Current District Law. The revised definition of “Mayor” is identical to the current statutory definition.²⁴

- (8) “Medical waste” means waste from medical research, medical procedures, or pathological, industrial, or medical laboratories. Medical waste includes, but is not limited to, the following types of solid waste:**
- (A) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;**
 - (B) Pathological waste, including tissues, organs, and body parts that are removed during surgery or autopsy;**
 - (C) Human blood waste and products of blood, including serum, plasma, and other blood components;**
 - (D) Sharps that have been used in patient care or medical research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades;**

¹⁹ D.C. Code § 8-902.

²⁰ D.C. Code § 8-905.

²¹ D.C. Code § 8-902.

²² D.C. Code § 8-901(3) (“‘Mayor’ means the Mayor of the District of Columbia.”).

²³ Definitions (D.C. Code § 8-901); the offense (D.C. Code § 8-902); the enforcement provision (D.C. Code § 8-903); the bounty provision (D.C. Code § 8-904); the civil forfeiture provision (§ 8-905); and the mayoral authorization to promulgate rules and regulations (D.C. Code § 8-906).

²⁴ D.C. Code § 8-901(3) (“‘Mayor’ means the Mayor of the District of Columbia.”).

- (E) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;**
- (F) Waste from surgery or autopsy that was in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;**
- (G) Laboratory waste from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that was in contact with infectious agents, including slides, and cover slips, disposable gloves, laboratory coats, and aprons;**
- (H) Dialysis waste that was in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;**
- (I) Discarded medical equipment and parts that were in contact with infectious agents;**
- (J) Biological waste and discarded materials contaminated with blood, excretion, exudates and secretion from human beings or animals who are isolated to protect others from communicable diseases; and**
- (K) Such other waste material that results from the administration of medical care to a patient by a health care provider that poses a threat to human health or the environment, or is found by the Mayor to do so.**

Explanatory Note. The revised definition of “medical waste” replaces the current definition of “medical waste” in D.C. Code § 8-901,²⁵ applicable to the current D.C. Code illegal

²⁵ D.C. Code § 8-901(3A):

‘Medical waste’ means solid waste from medical research, medical procedures, or pathological, industrial, or medical laboratories. Medical waste includes, but is not limited to, the following types of solid waste:

- (A) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;
- (B) Pathological waste, including tissues, organs, and body parts that are removed during surgery or autopsy;
- (C) Human blood waste and products of blood, including serum, plasma, and other blood components;
- (D) Sharps that have been used in patient care or medical research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades;
- (E) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;
- (F) Waste from surgery or autopsy that was in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;

dumping offense. The revised definition of “medical waste” is used in the revised illegal dumping statute.²⁶

Relation to Current District Law. The revised definition of “medical waste” may change current District law in one way.

In the revised definition, the catchall provision has two independent bases for determining whether waste is “medical waste”—it must either “pose[] a threat to human health or the environment” or be “found by the Mayor” to pose such a threat. The catchall provision in the current D.C. Code illegal dumping definition of “medical waste” is “[s]uch other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Mayor to pose a threat to human health or the environment.”²⁷ The plain language reading of this current catchall provision suggests that, even if a substance harmed or threatened to harm human health or the environment, it would only qualify as “medical waste” if it was also found to do so by the Mayor. Such a reading would likely unduly narrow the scope of “medical waste”. In addition, there does not appear to be a list of substances identified by the Mayor as “medical waste”.²⁸ There is no DCCA case law interpreting the current D.C. Code definition of “medical waste”. Resolving this ambiguity, the catchall provision in the revised definition of “medical waste” has two independent bases for determining whether waste is “medical waste”—it must either “pose[] a threat to human health or the environment” or be “found by the Mayor” to pose such a threat. This change improves the clarity and consistency of the revised illegal dumping statute.

The other change to the definition of “medical waste” is clarificatory in nature and is not intended to substantively change District law.

The revised definition of “medical waste” refers to “waste”, as opposed to “solid waste”. The current D.C. Code illegal dumping offense defines “medical waste”²⁹ as “solid waste from medical research, medical procedures, or pathological, industrial, or medical laboratories” and lists specific types of “solid waste” that qualify as “medical waste”. However, the current definition lists several substances that are not solid, such as blood and blood products³⁰ and includes an

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- (G) Laboratory waste from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that was in contact with infectious agents, including slides, and cover slips, disposable gloves, laboratory coats, and aprons;
 - (H) Dialysis waste that was in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;
 - (I) Discarded medical equipment and parts that were in contact with infectious agents;
 - (J) Biological waste and discarded materials contaminated with blood, excretion, exudates and secretion from human beings or animals who are isolated to protect others from communicable diseases; and
 - (K) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Mayor to pose a threat to human health or the environment.

²⁶ D.C. Code § 8-902.

²⁷ D.C. Code § 8-901(3A)(K).

²⁸ Unlike the definition of “hazardous waste”, discussed elsewhere in this commentary, there is no D.C. Municipal Regulation that identifies substances that are “medical waste”.

²⁹ D.C. Code § 8-901(3A).

³⁰ D.C. Code § 8-901(C).

expansive catchall provision for other “waste”.³¹ For clarity, the revised definition of “medical waste” refers consistently to “waste”. The revised definition of “waste” is discussed elsewhere in this commentary and is substantively identical to the current D.C. Code illegal dumping definition of “solid waste”.

(9) “Motor vehicle” means any conveyance propelled by an internal combustion engine, electricity, or steam.

Explanatory Note. The revised definition of “motor vehicle” replaces the current definition of “motor vehicle” in D.C. Code § 8-901,³² applicable to the current D.C. Code illegal dumping offense. The revised definition of “motor vehicle” is used in the revised illegal dumping statute³³ and the applicable civil forfeitures statute.³⁴

Relation to Current District Law. The revised definition of “motor vehicle” is identical to the current statutory definition.³⁵

(10) “Person” means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District of Columbia or federal government, or any other entity.

Explanatory Note. The revised definition of “person” replaces the current definition of “person” in D.C. Code § 8-901,³⁶ applicable to the current D.C. Code illegal dumping offense. The revised definition of “person” is used in the revised illegal dumping definitions,³⁷ revised illegal dumping statute,³⁸ the applicable bounty statute,³⁹ and the applicable civil forfeitures statute.⁴⁰

³¹ D.C. Code § 8-901(K) (“[s]uch other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Mayor to pose a threat to human health or the environment.”).

³² D.C. Code § 8-901(4) (“‘Motor vehicle’ means any conveyance propelled by an internal combustion engine, electricity, or steam.”).

³³ D.C. Code § 8-902.

³⁴ D.C. Code § 8-905.

³⁵ D.C. Code § 8-901(4) (“‘Motor vehicle’ means any conveyance propelled by an internal combustion engine, electricity, or steam.”).

³⁶ D.C. Code § 8-901(5) (“‘Person’ means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or any other entity.”).

³⁷ D.C. Code § 8-901.

³⁸ D.C. Code § 8-902.

³⁹ D.C. Code § 8-904.

⁴⁰ D.C. Code § 8-905.

Relation to Current District Law. The revised definition of “person” is identical to the current D.C. Code illegal dumping definition of “person”,⁴¹ except that it refers to the “District of Columbia” as opposed to the “District”.⁴²

(11) “Possess”, and other parts of speech, including “possesses”, “possessing”, and “possession”, shall have the same meaning as provided in § 22A-101.

Explanatory Note. The definition of “possess” is addressed in the Commentary accompanying RCC § 22A-101. The revised definition of “possess” appears in numerous RCC provisions, including the revised illegal dumping civil forfeitures statute.⁴³

(12) “Recklessly”, and other parts of speech, including “reckless” and “recklessness”, shall have the same meaning as provided in § 22A-206.

Explanatory Note. The definition of “recklessly” is addressed in the Commentary accompanying RCC § 22A-206. The revised definition of “recklessly” appears in numerous RCC provisions, including the revised illegal dumping statute.⁴⁴

(13) “Waste” means combustible or incombustible refuse. Waste includes appliances, furniture, mattresses, shopping carts, tires, dirt, sand, sawdust, gravel, clay, loam, stone, rocks, rubble, building rubbish, shavings, trade or household waste, refuse, ashes, manure, vegetable matter, paper, dead animals, garbage or debris of any kind, any other organic or inorganic material or thing, or any other offensive matter.

Explanatory Note. The revised definition of “waste” replaces the current definition of “solid waste” in D.C. Code § 8-901,⁴⁵ applicable to the current D.C. Code illegal dumping offense. The revised definition of “waste” is used in several revised illegal dumping definitions⁴⁶ and in the revised illegal dumping statute.⁴⁷

⁴¹ D.C. Code § 8-901(5) (“Person’ means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or any other entity.”).

⁴² As is discussed in the commentary to the revised illegal dumping statute, the revised illegal dumping definitions in D.C. Code § 8-901 no longer separately define “District” as “the District of Columbia”. Instead, the revised illegal dumping statutes refer to directly to “the District of Columbia”.

⁴³ D.C. Code § 8-905.

⁴⁴ D.C. Code § 8-902.

⁴⁵ D.C. Code § 8-901(6) (“‘Solid waste’ means combustible or incombustible refuse. Solid waste includes appliances, furniture, mattresses, shopping carts, tires, dirt, sand, sawdust, gravel, clay, loam, stone, rocks, rubble, building rubbish, shavings, trade or household waste, refuse, ashes, manure, vegetable matter, paper, dead animals, garbage or debris of any kind, any other organic or inorganic material or thing, or any other offensive matter.”).

⁴⁶ D.C. Code § 8-901.

⁴⁷ D.C. Code § 8-902.

Relation to Current District Law. The revised definition of “waste” is identical to the current D.C. Code illegal dumping definition of “solid waste”,⁴⁸ except that it refers to “waste” instead of “solid waste”. The current definition of “solid waste” conflicts with the accompanying definitions of “hazardous waste”⁴⁹ and “medical waste”⁵⁰, which include liquid and other forms of waste. Using and defining the term “waste” clarifies that the revised illegal dumping offense applies to all forms of waste, not just solid waste.

⁴⁸ D.C. Code § 8-901(6) (“‘Solid waste’ means combustible or incombustible refuse. Solid waste includes appliances, furniture, mattresses, shopping carts, tires, dirt, sand, sawdust, gravel, clay, loam, stone, rocks, rubble, building rubbish, shavings, trade or household waste, refuse, ashes, manure, vegetable matter, paper, dead animals, garbage or debris of any kind, any other organic or inorganic material or thing, or any other offensive matter.”).

⁴⁹ The current D.C. Code illegal dumping offense defines “hazardous waste”, in part as “any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may” harm, or threaten to harm, human health or the environment. D.C. Code § 8-901(2A).

⁵⁰ The current D.C. Code illegal dumping offense defines “medical waste”, in part, as “solid waste from medical research, medical procedures, or pathological, industrial, or medical laboratories” and lists numerous types of “solid waste” that qualify as “medical waste”, including an expansive catchall provision. D.C. Code § 8-901(3A). However, several items listed in the current definition of “medical waste” are not solid waste, such as “[h]uman blood waste and products of blood, including serum, plasma, and other blood components” and “[s]uch other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Mayor to pose a threat to human health or the environment.” D.C. Code § 8-901(C), (K).

§ 8-902. Illegal Dumping.

- (a) *First degree.* An actor commits first degree illegal dumping when the actor:
 - (1) Knowingly disposes waste in the District of Columbia; and
 - (2) Does so:
 - (A) With intent that any person receives economic gain as a result; or
 - (B) With recklessness as to the fact that the waste is either:
 - (i) Medical waste; or
 - (ii) Hazardous waste.
- (b) *Second degree.* An actor commits second degree illegal dumping when the actor knowingly disposes waste in the District of Columbia.
- (c) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the site of disposal is authorized for the disposal of waste by the Mayor of the District of Columbia.
- (d) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of subsection (b) of this section.
- (e) *Criminal penalties.*
 - (1) First degree illegal dumping is a felony, and shall be subject to a fine for each offense not to exceed \$40,000, or a term of imprisonment not to exceed 5 years, or both.
 - (2) Second degree illegal dumping is a misdemeanor, and shall be subject to a fine not to exceed \$5,000 for the first offense and \$10,000 for each subsequent offense, or a term of imprisonment not to exceed 90 days, or both.
 - (3) The fines set forth in this subsection shall not be limited by § 22-3571.01.
- (f) *Civil penalties.*
 - (1) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this chapter, or any rules or regulations issued under the authority of this chapter, provided that a civil fine up to \$10,000 may be assessed for each offense.
 - (2) Any person who knowingly disposes of hazardous waste in violation of this chapter shall be liable for a civil penalty in an amount not to exceed \$40,000 for each violation.
 - (3) Adjudication of any civil infraction of this chapter shall be enforced by the Mayor pursuant to § 8-802.
- (g) *Motor vehicle forfeiture.*
 - (1) In addition to any other penalties provided in this section, a person's ownership interest in a motor vehicle used in violating this chapter shall be subject to seizure and forfeiture.
 - (2) All seizures and forfeitures of motor vehicles under this chapter shall be in accordance with § 8-905.
- (h) *Reimbursement of costs.* Any person violating subsection (a) or (b) of this section shall also be liable and responsible for paying 3 times the cost and expense incurred by the Mayor for cleaning and clearing the site where the unlawful disposal occurred and for properly disposing of the waste. Payment shall be made within 10 days of demand by the Mayor.
- (i) *Loss of license, permit, or registration.*

- (1) The Mayor may deny, revoke, or not renew, for a period of not less than 30 days, the business license, permit, or motor vehicle registration issued, or to be issued, to any person who has committed a violation of this chapter, provided that the business license, permit, or motor vehicle registration is substantially related to the commission of the offense of illegal dumping of waste in the District of Columbia.
- (2) The business license, permit, or motor vehicle registration may not be issued or reissued for a period of not less than 30 days and until all fines, penalties, and fees assessed under this section have been fully satisfied.
- (j) *Other sanctions.* The Mayor may impose any sanction provided in Chapter 8 of this title, to the extent that it is not inconsistent with this chapter.
- (k) *Civil enforcement authority.* In addition to or in lieu of enforcement by the Mayor pursuant to subsection (f) or (j) of this section or criminal enforcement of subsection (a) or (b) of this section, the Attorney General for the District of Columbia may commence a civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction for damages, civil penalties, cost recovery, reasonable attorney and expert witness fees, and injunctive or other appropriate relief to enforce compliance with this chapter or regulations adopted pursuant to this chapter.
- (l) *Interpretation of statute.* Except for § 22A-101, Chapter 1 of Title 22A of the District of Columbia Code shall apply to this offense.

Explanatory Note. *This section establishes the illegal dumping offense and penalty gradations for the Revised Criminal Code (RCC). The offense prohibits knowingly disposing of waste at an unauthorized site. The penalty gradations are based on the type of waste. The offense replaces D.C. Code § 8-902.*

Subsection (a) specifies the prohibited conduct in first degree illegal dumping, the highest gradation of the revised offense. Paragraph (a)(1) specifies part of the prohibited conduct—disposing of waste in the District of Columbia. “Disposes” is a defined term in D.C. Code § 8-901 that generally means discharging, depositing, dumping, or placing.⁵¹ “Waste” is a defined term in D.C. Code § 8-901 that means combustible or incombustible refuse. Paragraph (a)(1) specifies a culpable mental state of “knowingly”, a defined term in RCC § 22A-206 that here means that the actor must be “practically certain” that they will discharge, deposit, dump, or place waste in the District of Columbia.⁵²

Paragraph (a)(2) and subparagraph (a)(2)(A) specify that the actor must knowingly dispose of waste “with intent” that any person receives economic gain as a result. “Intent” is a defined term in RCC § 22A-206 that here requires that the actor was practically certain that any person

⁵¹ Revised D.C. Code § 8-901 also defines “disposes” to include “allow[ing], as an employer or manager, a subordinate to discharge, deposit, dump, or place”. “An employer or manager” would include an owner of a business or other entity. A “subordinate” can include an employee, as well as an agent or a contractor. However, the employer or manager must have supervisory or disciplinary authority over the employee, agent, or contractor.

⁵² D.C. Code § 8-901 also defines “disposes” to include “allow[ing], as an employer or manager, a subordinate to discharge, deposit, dump, or place”. D.C. Code § 8-901. The “knowingly” culpable mental state specified in paragraph (a)(1) of the revised illegal dumping offense also applies to this part of the revised definition of “disposes”. “Knowingly” is a defined term in RCC § 22A-206 that here means that the actor must be “practically certain” that they are an employer or manager of a subordinate and that they allowed the subordinate to discharge, deposit, dump, or place any waste in the District of Columbia.

would receive economic gain as a result of the illegal disposal. Per RCC § 22A-205, the object of the phrase “with intent that” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that a person received economic gain as a result of the illegal dumping, only that the actor believed to a practical certainty this would occur.

Paragraph (a)(2), subparagraph (a)(2)(B), and sub-subparagraph (a)(2)(B)(i) specify a type of prohibited waste for first degree illegal dumping—medical waste. “Medical waste” is a defined term in D.C. Code § 8-901. Per the rule of interpretation in RCC § 22A-207, the “reckless” culpable mental state specified in subparagraph (a)(2)(B) applies to the elements in sub-subparagraph (a)(2)(B) and sub-subparagraph (a)(2)(B)(i). “Reckless” is a defined term in RCC § 22A-206 that here means that the actor must be aware of a substantial risk that the waste is “medical waste”, as that term is defined in D.C. Code § 8-901.

Paragraph (a)(2), subparagraph (a)(2)(B), and sub-subparagraph (a)(2)(B)(ii) specify the other type of prohibited waste for first degree illegal dumping—hazardous waste. “Hazardous waste” is a defined term in D.C. Code § 8-901. Per the rule of interpretation in RCC § 22A-207, the “reckless” culpable mental state specified in subparagraph (a)(2)(B) applies to the elements in subparagraph (a)(2)(B) and sub-subparagraph (a)(2)(B)(ii). “Reckless” is a defined term in RCC § 22A-206 that here means that the actor must be aware of a substantial risk that the waste is “hazardous waste”, as that term is defined in D.C. Code § 8-901.

Subsection (b) specifies the prohibited conduct in second degree illegal dumping, the lowest gradation of the revised offense—disposing of waste in the District of Columbia. “Disposes” is a defined term in D.C. Code § 8-901 that generally means discharging, depositing, dumping, or placing.⁵³ “Waste” is a defined term in D.C. Code § 8-901 that means combustible or incombustible refuse. Subsection (b) specifies a culpable mental state of “knowingly”, a defined term in RCC § 22A-206 that here means that the actor must be “practically certain” that they will discharge, deposit, dump, or place waste in the District of Columbia.⁵⁴

Subsection (c) excludes from liability waste disposal on a site that the Mayor has authorized for waste disposal. Subsection (c) uses the phrase “in fact”, a defined term in RCC § 22A-207 that indicates there is no culpable mental state requirement as to a given element, here that the site is authorized by the Mayor for the disposal of waste.

Subsection (d) states that the Attorney General for the District of Columbia “shall” prosecute violations of the misdemeanor gradation of the revised illegal dumping statute, second degree illegal dumping.⁵⁵

Subsection (e) specifies the criminal penalties for the revised illegal dumping offense. Subsection (e) further states that the specified fines shall not be limited by the District’s Fine

⁵³ Revised D.C. Code § 8-901 also defines “disposes” to include “allow[ing], as an employer or manager, a subordinate to discharge, deposit, dump, or place”. “An employer or manager” would include an owner of a business or other entity. A “subordinate” can include an employee, as well as an agent or a contractor. However, the employer or manager must have supervisory or disciplinary authority over the employee, agent, or contractor.

⁵⁴ Revised D.C. Code § 8-901 also defines “disposes” to include “allow[ing], as an employer or manager, a subordinate to discharge, deposit, dump, or place”. The “knowingly” culpable mental state specified in paragraph (b)(1) of the revised illegal dumping offense also applies to this part of the revised definition of “disposes”. “Knowingly” is a defined term in RCC § 22A-206 that here means that the actor must be “practically certain” that they are an employer or manager of a subordinate and that they allowed the subordinate to discharge, deposit, dump, or place any waste in the District of Columbia.

⁵⁵ Subsection (d) of the revised illegal dumping statute codifies current District law. The current D.C. Code illegal dumping statute states that OAG “shall prosecute” violations of the misdemeanor gradation of the offense. D.C. Code § 8-902(i). This provision codifies a D.C. Court of Appeals decision, *In re Settles*, 218 A.3d 235, 244 (D.C. 2019).

Proportionality Act (FPA) (D.C. Code § 22-3571.01). This FPA exemption is discussed elsewhere in this commentary.

Subsection (f) establishes that civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of “this chapter”,⁵⁶ or any rules or regulations issued under the authority of “this chapter”. A civil fine of up to \$10,00 may be assessed for each offense, but any person who “knowingly disposes of hazardous waste in violation of this chapter” shall be liable for a civil penalty not to exceed \$40,000 for each violation. Per subsection (f)(3), adjudication of any civil infraction of “this chapter” shall be enforced by the Mayor pursuant to D.C. Code § 8-802.

Subsection (g) states that, in addition to any other penalties provided in the revised illegal dumping statute, a person’s ownership interest in a motor vehicle used to violate “this chapter”⁵⁷ shall be subject to seizure and forfeiture. Subsection (g) further states that all such seizures and forfeitures shall be in accordance with D.C. Code § 8-905.

Subsection (h) establishes that any person violating the first degree or second degree of the revised illegal dumping statute shall be liable and responsible for paying 3 times the cost and expense incurred by the Mayor for cleaning and clearing the site of the unlawful disposal and for properly disposing of the waste. Subsection (h) further establishes that payment shall be made within 10 days of demand by the Mayor.

Subsection (i) establishes that the Mayor may deny, revoke, or not renew the business license, permit, or motor vehicle registration that has been issued, or will be issued, to any person who has committed a violation of “this chapter”.⁵⁸ The business license, permit, or motor vehicle registration must be “substantially related” to the commission of the illegal dumping. Subsection (i) further establishes that the denial, revocation, or non-renewal must be for a period of not less than 30 days, and that all fines, penalties, and fees must be fully satisfied before any issuance or reissuance.

Subsection (j) states that the Mayor may impose any sanction provided in Chapter 8 of this title (Title 8 of the D.C. Code), to the extent that it is not inconsistent with “this chapter.”⁵⁹

Subsection (k) establishes the civil enforcement authority of OAG for the revised illegal dumping statute. Subsection (k) establishes that this civil enforcement authority is “[i]n addition to or in lieu of” enforcement by the Mayor pursuant to subsection (f) or (j)⁶⁰ of the revised illegal dumping statute or criminal enforcement of subsection (a) or (b)⁶¹ of the revised illegal dumping statute.

⁵⁶ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 in Subtitle B of Title 8 of the D.C. Code.

⁵⁷ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 in Subtitle B of Title 8 of the D.C. Code.

⁵⁸ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 in Subtitle B of Title 8 of the D.C. Code.

⁵⁹ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 in Subtitle B of Title 8 of the D.C. Code.

⁶⁰ Subsection (k) of the revised illegal dumping statute is substantively identical to the equivalent provision in the current D.C. Code illegal dumping statute. In the current D.C. Code illegal dumping statute, this provision refers, in relevant part, to enforcement by the Mayor pursuant to “subsection (c) [alternative civil penalties] or (h) [other sanctions in Title 8]”. D.C. Code § 8-902(j). In the revised illegal dumping statute, the current subsection (c) is codified in subsection (f) and current subsection (h) is codified in subsection (j).

⁶¹ Subsection (k) of the revised illegal dumping statute is substantively identical to the equivalent provision in the current D.C. Code illegal dumping statute. The equivalent provision refers, in relevant part, to “criminal enforcement pursuant to subsection (b) [of the current illegal dumping statute]”. D.C. Code § 8-902(j). Subsection (b) of the current illegal dumping statute establishes arrest authority for illegal dumping as a criminal offense and the criminal penalties. As is discussed elsewhere in this commentary, the revised illegal dumping statute deletes the arrest provision as superfluous. Subsection (k) of the revised illegal dumping statute refers to “criminal enforcement of subsection (a) or (b) [first degree or second degree]”.

Subsection (l) establishes that, except for D.C. Code § 22A-101, Chapter 1 of Title 22A of the D.C. Code shall apply to the revised illegal dumping statute. D.C. Code § 22A-101 is excluded because it codifies definitions for the entire RCC, and the current and revised illegal dumping statutes have their own definitions (D.C. Code § 8-901). Any definitions codified in § 22A-101 that apply to the revised illegal dumping statute or related statutes are codified in revised D.C. Code § 8-901.

Relation to Current District Law. *The revised illegal dumping statute clearly changes current District law in three main ways.*

First, the revised illegal dumping statute exempts itself from the District’s Fine Proportionality Act (the FPA). The FPA establishes the maximum permissible fines for offenses in the D.C. Code⁶² based on the maximum term of imprisonment.⁶³ An offense may deviate from the FPA’s fines only if the offense specifically exempts itself.⁶⁴ The current D.C. Code illegal dumping offense does not exempt itself from the FPA.⁶⁵ Thus, the high fines in the current D.C. Code illegal dumping statute—\$5,000 for a first offense misdemeanor⁶⁶ and \$40,00 for the felony gradations⁶⁷—appear to be superseded by the FPA. The FPA’s maximum fines for the current illegal dumping statute are much lower—\$500 for misdemeanor illegal dumping⁶⁸ and \$12,500 for the felony gradations.⁶⁹ In contrast, subsection (e) of the revised illegal dumping statute specifically exempts the offense from the FPA. This ensures that the current illegal dumping statute’s fines—which the revised statute retains—are the fines for the offense. This change improves the proportionality of the revised statute.

Second, the revised illegal dumping statute specifies a culpable mental state of “recklessness” for the fact that the waste is hazardous or medical. The current D.C. Code illegal dumping statute prohibits, in relevant part, “knowingly dispos[ing] of hazardous waste”⁷⁰ and “knowingly dispos[ing] of medical waste”.⁷¹ The meaning of “knowingly” is unclear. The current

⁶² D.C. Code § 22-3571.01(a) (“Notwithstanding any other provision of the law, and except as provided in § 22-3571.02, a defendant who has been found guilty of an offense under the District of Columbia Official Code punishable by imprisonment may be sentenced to pay a fine as provided in this section.”).

⁶³ D.C. Code § 22-3571.01(b), (c).

⁶⁴ See D.C. Code §§ 22-3571.01(a) (“Notwithstanding any other provision of the law, and except as provided in § 22-3571.02 . . .”); 22-3571.02. Several environmental laws in Title 8 exempt themselves from the FPA. See, e.g., D.C. Code §§ 8-101.05d (“The fines set forth in this section shall not be limited by § 22-3571.01.”); 8-111.09 (“The fine set forth in this section shall not be limited by § 22-3571.01.”).

⁶⁵ The section-by-section analysis in the Committee Report from the Council’s Committee on the Judiciary and Public Safety states that section 2 of the bill (presumably the committee print) “provide[s] an exception from the Criminal Fine Proportionality Amendment Act of 2012 for the fines set in the statute.” See *Report of the Committee on the Judiciary and Public Safety on Bill 25-135, the “Illegal Dumping Enforcement Amendment Act of 2024”*, at 6 (October 17, 2024). However, section 2 of the Committee Print did not contain any such language.

⁶⁶ D.C. Code § 8-902(b)(2). The current D.C. Code illegal dumping statute authorizes a maximum fine of \$10,000 for a second or subsequent misdemeanor offense. *Id.*

⁶⁷ D.C. Code § 8-902(b)(2A), (b)(3), (b)(4).

⁶⁸ D.C. Code § 22-3571.01(b)(3) (FPA establishing a maximum possible fine of \$500 “if the offense is punishable by imprisonment for 90 days, or 3 months, or less but more than 30 days”). The current D.C. Code illegal dumping misdemeanor gradation has a maximum term of imprisonment of 90 days. D.C. Code § 8-902(b)(2).

⁶⁹ D.C. Code § 22-3571.01(b)(6) (FPA establishing a maximum possible fine of \$12,500 “if the offense is punishable by imprisonment for 5 years or less but more than one year”). The current D.C. Code illegal dumping felony gradations have a maximum term of imprisonment of 5 years. D.C. Code § 8-902(b)(2A), (b)(3), (b)(4).

⁷⁰ D.C. Code § 8-902(b)(3) (“Any person who knowingly disposes of hazardous waste . . .”).

⁷¹ D.C. Code § 8-902(b)(4) (“Any person who knowingly disposes of medical waste . . .”).

D.C. Code illegal dumping statute does not codify a definition⁷² and there is no DCCA case law on point. It is also possible that the Council codified “knowingly” because that is the mental state in the analogous federal statute,⁷³ where it is also undefined.⁷⁴ In contrast, the revised illegal dumping statute clearly requires a culpable mental state of “recklessness” as to the fact that the waste is hazardous or medical.⁷⁵ Under the RCC culpable mental state definitions, “recklessness” requires consciously disregarding a risk, and is a lower threshold than “knowing”, which requires “practical certainty”. A lower culpable mental state ensures that the revised statute applies to individuals and entities that are aware of a risk that the waste is medical or hazardous, but dispose of it anyway. This culpable mental state may be particularly helpful when individuals or entities do not generate the waste, but instead are hired or asked to dispose of it. A “recklessly” culpable mental state improves the clarity, consistency, and proportionality of the revised statute.

Third, in the revised statute, the disposal of hazardous waste or medical waste is subject to a fine, imprisonment, or both. In the current D.C. Code illegal dumping statute, the misdemeanor gradation and the felony commercial purpose gradation “shall be subject” to a fine, imprisonment, “or both”.⁷⁶ The remaining two felony gradations, for hazardous waste or medical waste, “shall be” “subject” to a fine “and” imprisonment.⁷⁷ The difference appears to be intentional,⁷⁸ but the

⁷² Current D.C. Code Title 22 statutes frequently use “knowingly” without defining the term and there is no generally applicable statutory definition.

⁷³ The current D.C. Code illegal dumping statute appears to be modeled after criminal provisions in the federal Resource Conservation and Recovery Act (RCRA). Specifically, 42 U.S.C. 6928(d)(2)(A), which prohibits “knowingly treat[ing], stor[ing], or dispos[ing] of any hazardous waste” identified or listed [in the RCRA] without a permit.

⁷⁴ 42 U.S.C.A. § 6903.

⁷⁵ This commentary assumes that, in the current D.C. Code illegal dumping statute, the “knowingly” in “knowingly disposes of medical waste” and “knowingly disposes of hazardous waste” extends to the type of waste and is not limited to “disposes”. The hazardous waste and medical waste gradations are two of the three felony gradations in the current illegal dumping statute. Applying “knowingly” to the type of waste in these provisions is consistent with the more serious felony penalties. In contrast, the misdemeanor gradation in the current D.C. Code illegal dumping statute applies to any solid waste and does not specify any culpable mental state. D.C. Code § 8-902(b)(2) (“Any person who disposes of solid waste which is neither hazardous nor medical waste in violation of subsection (a) of this section . . .”).

In addition, while not dispositive, the current D.C. Code illegal dumping statute appears to be modeled after criminal provisions in the federal Resource Conservation and Recovery Act (RCRA). Specifically, 42 U.S.C. 6928(d)(2)(A), which prohibits “knowingly treat[ing], stor[ing], or dispos[ing] of any hazardous waste” identified or listed [in the RCRA] without a permit. Federal case law establishes that “knowingly” applies to both the disposal and the fact that the waste is hazardous. *See, e.g., United States v. Laughlin*, 10 F.3d 961, 965 (2d Cir. 1993); *United States v. Johnson & Towers, Inc.*, 741 F.2d 662, 668 (3d Cir. 1984); *United States v. Dee*, 912 F.2d 741, 745-46 (4th Cir. 1990); *United States v. Baytank (Houston), Inc.*, 934 F.2d 599, 612 (5th Cir. 1991); *United States v. Kelley Tech. Coatings, Inc.*, 157 F.3d 432, 436, 438 (6th Cir. 1998); *United States v. Kelly*, 167 F.3d 1176, 1180 (7th Cir. 1999); *United States v. Hoflin*, 880 F.2d 1033, 1039 (9th Cir. 1989); *United States v. Self*, 2 F.3d 1071, 1091 (10th Cir. 1993); *United States v. Goldsmith*, 978 F.2d 643, 645 (11th Cir. 1992).

⁷⁶ D.C. Code § 8-902(b)(2), (b)(2A).

⁷⁷ D.C. Code § 8-902(b)(3) (“Any person who knowingly disposes of hazardous waste in violation of subsection (a) of this section shall be guilty of a felony, and subject to a fine for each offense not to exceed \$40,000, and a term of imprisonment not to exceed 5 years.”; (b)(4) (“Any person who knowingly disposes of medical waste in violation of subsection (a) of this section shall be guilty of a felony, and subject to a fine for each offense not to exceed \$40,000, and a term of imprisonment not to exceed 5 years.”).

⁷⁸ When the current D.C. Code illegal dumping statute was first enacted in 1994, it was limited to two gradations—a misdemeanor and, for hazardous waste, a felony. *See* Illegal Dumping Enforcement Act of 1994, 1994 District of Columbia Laws 10-117 (Act 10-181). The statute initially stated that both gradations “shall be punished” by a fine,

effect is unclear. The language seems to suggest that a judge must impose both a minimum fine and a minimum term of imprisonment, but the statute doesn't specify minimum amounts. In contrast, the revised illegal dumping statute has the same penalty options for each of the three felony gradations and the misdemeanor—a fine, imprisonment, or both—which allows the judge full discretion to determine the appropriate penalty in a given case. This change improves the proportionality of the revised statute.

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

First, the revised illegal dumping statute eliminates as a discrete basis of liability “caus[ing]” the disposal of waste. The current D.C. Code illegal dumping statute prohibits, in relevant part, “caus[ing]” the disposal” of waste.⁷⁹ The intended scope of “cause” is unclear. “Cause” encompasses individuals and businesses⁸⁰ that facilitate, coerce, or otherwise cause the illegal disposal of waste. There is no DCCA case law on point. However, legislative history indicates that the Council understands “causing” the disposal of waste, at minimum, as allowing companies to be held liable for the actions of their agents or contractors.⁸¹ Resolving this ambiguity, the revised illegal dumping statute eliminates as a discrete basis of liability “caus[ing]” the disposal of waste. Instead, the RCC’s accomplice liability⁸² and liability for conduct by innocent or irresponsible persons provisions,⁸³ provide liability for individuals and businesses that “purposefully” facilitate, coerce, or otherwise cause agents or contractors to dump waste illegally. The revised definition of “disposes” in D.C. Code § 8-901 provides liability for managers or employers that “knowingly” allow subordinates, including employees, agents, and contractors, to dispose of waste. This change improves the clarity, consistency, and proportionality of the revised statute.

imprisonment, or both. *Id.* In 1997, the other two felony gradations, commercial purpose and medical waste, were codified. *See* Illegal Dumping Enforcement Amendment Act of 1998, 1997 District of Columbia Laws 12-90 (Act 12-263). The new commercial purpose felony, like the misdemeanor, was made “subject to” a fine, imprisonment, “or both”. In contrast, the hazardous waste gradation was changed to a fine “and” a term of imprisonment, and the medical gradation matched. *Id.*

⁷⁹ D.C. Code § 8-902(a).

⁸⁰ This commentary focuses on businesses, but it should be noted that both the current and revised illegal dumping statutes apply to non-natural entities other than businesses, such as trusts. D.C. Code § 8-901(5) (defining “person” as “any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or any other entity.”).

⁸¹ The D.C. Council recently amended the current D.C. Code illegal dumping statute to clarify the definition of “solid waste”, codify that the Office of the Attorney General for the District of Columbia (OAG) has prosecutorial authority for the misdemeanor gradation, and to grant OAG civil enforcement authority. Illegal Dumping Enforcement Amendment Act of 2024, 2024 District of Columbia Laws 25-263 (Act 25-642) (2025). In the Committee Report from the Council’s Committee on the Judiciary and Public Safety, the Committee responded to an individual’s testimony advocating for OAG to prosecute and fine businesses for the conduct of their contractors. *See, Report of the Committee on the Judiciary and Public Safety on Bill 25-135, the “Illegal Dumping Enforcement Amendment Act of 2024”*, at 2 (October 17, 2024) (hereinafter Committee Report). The Committee Report states that “the Committee is satisfied that the existing language in Section 8-902(a), which makes it unlawful to “dispose or cause or permit the disposal of solid waste” . . . is sufficient and appropriate for OAG to hold companies liable for the actions of their agents or contractors.” Committee Report at 2-3 (emphasis in original). The Committee later stated in its conclusion that “[t]his legislation will strengthen OAG’s ability to enforce the District’s dumping prohibition, particularly against corporate violators, and deter future dumping.” *Id.* at 3.

⁸² The RCC accomplice liability provision generally requires purposely assisting with or encouraging the planning or commission of an offense—here, illegal dumping. RCC § 22A-210.

⁸³ RCC § 22A-211.

Second, the revised illegal dumping statute narrows “permit[ting]” the disposal of waste to employers or managers. The current D.C. Code illegal dumping statute prohibits, in relevant part, “permit[ting]” the disposal of waste.⁸⁴ The intended scope of “permit” is unclear. “Permit” encompasses businesses⁸⁵ that allow employees to illegally dispose of waste, but also extends to individuals, such as married couples or neighbors,⁸⁶ that allow their spouses or neighbors to illegally dispose of waste.⁸⁷ There is no DCCA case law on point. However, legislative history indicates that the Council understands “permitting” the disposal of waste, at minimum, as allowing companies to be held liable for the actions of their agents or contractors.⁸⁸ Resolving this ambiguity, the revised illegal dumping statute, through the revised definition of “disposes”,⁸⁹ narrows “permit[ting]” the disposal of waste to employers or managers allowing a subordinate,

⁸⁴ D.C. Code § 8-902(a).

⁸⁵ This commentary focuses on businesses, but it should be noted that the both the current and revised illegal dumping statutes apply to non-natural entities other than businesses, such as trusts. D.C. Code § 8-901(5) (defining “person” as “any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or any other entity.”).

⁸⁶ The commentary uses these hypotheticals—married couples and neighbors—because they seem somewhat plausible. However, the current D.C. Code illegal dumping statute does not require a relationship between the individuals or that they even know each other. Thus, the plain language reading of the statute includes an individual that permits a complete stranger to illegally dispose of waste.

⁸⁷ “Permit” in the current D.C. Code illegal dumping statute also arguably extends to spills or leaks. The applicable definition of “dispose” is “discharge, deposit, dump, or place any solid waste in the District of Columbia.” D.C. Code § 8-901(1A). When this definition is inserted into the current D.C. Code illegal dumping statute, the plain language reading, in relevant part, is “permit[ting]” the discharge, deposit, dumping, or placing of waste in the District of Columbia. Failing to mitigate or remedy a spill or a leak arguably amounts to “permit[ting]” the discharge, deposit, etc. of waste in the current D.C. illegal dumping statute.

Despite this plain language reading, however, the Council appears to have intentionally omitted spills and leaks from the definition of “dispose”. The Council appears to have modeled the definition after the equivalent definition in the federal Resource Conservation and Recovery Act (RCRA). The federal definition is, in relevant part, the “discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste. . .” 42 U.S.C.A. § 6903(3). As can be seen, the D.C. definition of “dispose”, applicable to the current illegal dumping statute, includes the same verbs, in the same order, as the federal definition, with just three exceptions—*injection, spilling, and leaking*. These omissions suggest that the Council intentionally excluded spills and leaks from the current D.C. Code illegal dumping statute, despite the plain language reading of “permit”.

In addition, the Council specifically included spills and leaks in other Title 8 environmental laws that deal with waste. First, the District’s Water Pollution Control Act of 1984 prohibits, with few exceptions, “discharg[ing] a pollutant to the waters of the District” and defines “discharge” to include “spilling” and “leaking”. D.C. Code §§ 8-103.2; 8-103.01(5). Second, the District of Columbia Hazardous Waste Management Act of 1977 specifically prohibits the unauthorized “dispos[al] of any hazardous waste” and defines “disposal” to include “spilling” and “leaking”. D.C. Code §§ 8-1303(a); 8-1302(1).

⁸⁸ The D.C. Council recently amended the current D.C. Code illegal dumping statute to clarify the definition of “solid waste”, codify that the Office of the Attorney General for the District of Columbia (OAG) has prosecutorial authority for the misdemeanor gradation, and to grant OAG civil enforcement authority. Illegal Dumping Enforcement Amendment Act of 2024, 2024 District of Columbia Laws 25-263 (Act 25-642) (2025). In the Committee Report from the Council’s Committee on the Judiciary and Public Safety, the Committee responded to an individual’s testimony advocating for OAG to prosecute and fine businesses for the conduct of their contractors. *See Report of the Committee on the Judiciary and Public Safety on Bill 25-135, the “Illegal Dumping Enforcement Amendment Act of 2024”*, at 2 (October 17, 2024) (hereinafter Committee Report). The Committee Report states that “the Committee is satisfied that the existing language in Section 8-902(a), which makes it unlawful to “dispose or cause or permit the disposal of solid waste” . . . is sufficient and appropriate for OAG to hold companies liable for the actions of their agents or contractors.” Committee Report at 2-3 (emphasis in original). The Committee later stated, in its conclusion that “[t]his legislation will strengthen OAG’s ability to enforce the District’s dumping prohibition, particularly against corporate violators, and deter future dumping.” *Id.* at 3.

⁸⁹ D.C. Code § 8-901.

including employees, agents, and contractors, to illegally dispose of waste. Outside of this limited context, the revised statute does not criminalize permitting the illegal disposal of waste because it would lead to disproportionate penalties.⁹⁰ This change improves the clarity, consistency, and proportionality of the revised statute.

Third, the revised illegal dumping statute specifies a culpable mental state of “knowingly” for the elements “disposes of waste”. The current D.C. Code illegal dumping statute does not specify any culpable mental states for the disposal of waste.⁹¹ There is no relevant DCCA case law on point. Resolving this ambiguity, both degrees of the revised illegal dumping statute require a “knowingly” culpable mental state for the elements “disposes waste”. Applying a knowledge culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.⁹² This change improves the clarity and consistency of the revised offense.

Fourth, the revised statute codifies an exclusion from liability when the site of the disposal is authorized by the Mayor. The current D.C. Code illegal dumping statute prohibits disposal of waste “unless the site is authorized for the disposal of [] waste by the Mayor.”⁹³ It is unclear whether lack of authorization is an element of the offense that the government must prove beyond a reasonable doubt, or if authorization is a defense that the government must disprove beyond a reasonable doubt.⁹⁴ Resolving this ambiguity, the revised statute codifies Mayoral authorization as an exclusion from liability. Under the RCC general provisions,⁹⁵ if there is any evidence of the exclusion at trial, the government must prove the absence of at least one element of the exclusion beyond a reasonable doubt. This improves the clarity of the revised statute.

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

⁹⁰ An actor may still be liable for permitting a disposal if the requirements of omission liability under § 22A-202 are satisfied. For example, if a manager of a company has a duty to remedy leaks of hazardous waste and “permits” hazardous waste to leak from pipes owned by the company, under omission liability principles in § 22A-202, the manager may be held liable for disposing of the hazardous waste by omission; i.e. by failing to act to remedy the leak. It is a well-established legal principle that criminal liability for failing to act must be based on a legal duty to act, as opposed to a moral duty. *See, e.g., United States v. Sabhnani*, 599 F.3d 215, 237 (2d Cir. 2010) (“It is a long-established principle that criminal law generally regulates action, rather than omission, and that ‘[f]or criminal liability to be based upon a failure to act it must first be found that there is a duty to act—a legal duty and not simply a moral duty.’”) (quoting Wayne R. LaFare, *Substantive Criminal Law* § 6.2 (2d ed. 2008)). Outside of employers and managers, the revised illegal dumping statute does not impose a legal duty on individuals or entities to stop illegal dumping. Other individuals and entities may not have the same authority that an employer or manager has over a subordinate.

⁹¹ D.C. Code § 8-902(a) (“It shall be unlawful for any person to dispose or cause or permit the disposal of solid waste, hazardous waste, or medical waste in or upon . . .”).

⁹² *See Elonis*, 135 S. Ct. at 2009 (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

⁹³ D.C. Code § 8-902(a).

⁹⁴ The current D.C. Code Title 22 does not have any general provisions governing defenses. However, under DCCA case law, a defense differs from an element of the offense primarily in the “burden of production”. With a defense, the defendant must identify evidence, from either the government’s case or the defendant’s case, “sufficient for a reasonable jury to find in [their] favor.” *Lihlakha v. United States*, 123 A.3d 167, 169 (D.C. 2015). Once the defendant satisfies the burden of production, the government must disprove the defense beyond a reasonable doubt. *Id.*

⁹⁵ RCC § 22A-201.

First, first degree of the revised illegal dumping statute prohibits the disposal of waste “with intent that any person receives economic gain as a result”. The current D.C. Code illegal dumping statute prohibits, in relevant part, the disposal of waste “for the purpose of a person’s economic gain.”⁹⁶ To avoid confusion with the RCC culpable mental state “purposely”, first degree of the revised illegal dumping statute requires “with intent that any person receives economic gain as a result.” “With intent” is a defined term in the RCC that here requires that a person is “practically certain” that any person will receive economic gain as a result.⁹⁷ It is unnecessary that any economic benefit actually occur. This change improves the clarity and proportionality of the revised statute.

Second, the revised statute deletes the arrest subsection that is in the current D.C. Code illegal dumping statute. The arrest subsection states that “Any person who violates subsection (a) of this section shall be liable to arrest.”⁹⁸ This subsection is unnecessary because it is clear the current illegal dumping statute is a crime, even though it authorizes alternative civil penalties. The revised illegal dumping statute deletes this arrest subsection. This change improves the clarity of the revised statute.

Third, the revised illegal dumping statute has two gradations. These gradations correspond to, and have the same penalties as, the gradations in the current D.C. Code illegal dumping statute.⁹⁹ This change improves the clarity of the revised statute.

Fourth, the revised illegal dumping statute does not list prohibited locations for the disposal of waste. The current D.C. Code illegal dumping statute prohibits disposing waste “in or upon any street, lot, park, public place, or any other public or private area”.¹⁰⁰ This language essentially prohibits dumping waste in any location and is surplusage. For clarity, the revised statute deletes this list of locations. This change improves the clarity of the revised statute.

Fifth, the revised illegal dumping statute deletes the separate definition of “District”¹⁰¹ applicable to the current D.C. Code illegal dumping offense. The revised illegal dumping statute instead codifies the substance of the definition directly in the revised offense. This change improves the clarity of the revised statute.

⁹⁶ The current D.C. Code illegal dumping statute prohibits, in relevant part, disposing of waste “for a commercial purpose”. D.C. Code § 8-902(a), (b)(2A). “Commercial purpose” is separately defined as “for the purpose of a person’s economic gain.” D.C. Code § 8-901(1). The revised illegal dumping statute deletes the separate definition of “commercial purpose” and codifies the substance directly in the revised offense.

⁹⁷ “As a result” is consistent with “for the purpose of” in the current statute and is necessary given the RCC definition of “with intent that”. If “as a result” were not required, “with intent that any person receives economic gain” would encompass situations where the defendant disposes of waste and is “practically certain that any person receives economic gain”, even if unrelated to the disposal. For example, if a person dumps tires on a Friday and knows that their friend is getting paid that same day for an unrelated job because the friend gets paid every Friday or mentioned an upcoming pay day, “with intent that any person receives economic gain” would encompass this situation even though the friend had no part of or benefit from the dumping of the tires. By including “as a result” in the statutory language, the revised illegal dumping statute excludes this type of situation.

⁹⁸ D.C. Code § 8-902(b)(1).

⁹⁹ First degree of the revised illegal dumping statute corresponds to the felony gradations in the current D.C. Code illegal dumping statute, with the same penalties. D.C. Code § 8-902(b)(2A), (b)(3), (b)(4). Second degree of the revised illegal dumping statute corresponds to the current D.C. Code illegal dumping misdemeanor gradation, with the same penalties. D.C. Code § 8-902(b)(2). As is discussed elsewhere in this commentary, the fines codified in the current D.C. Code illegal dumping statute have been statutorily superseded by the District’s Fine Proportionality Act (FPA). The revised statute exempts itself from the FPA, so that the fines listed in the revised statute are the applicable fines for the offense.

¹⁰⁰ D.C. Code § 8-902(a).

¹⁰¹ D.C. Code § 8-901(2) (“‘District’ means the District of Columbia.”).

Sixth, the revised illegal dumping statute deletes the separate definition of “commercial purpose”,¹⁰² applicable to the current D.C. Code illegal dumping offense. The revised illegal dumping statute instead codifies the substance of the definition directly in the revised offense. This change improves the clarity of the revised statute.

¹⁰² D.C. Code § 8-901(1) (“‘Commercial purpose’ means for the purpose of a person’s economic gain.”).

§ 8-903. Enforcement.

The Mayor may establish a special law enforcement unit with police powers to enforce this chapter, Chapter 8 of this title, Chapter 13 of this title, subchapter II of Chapter 1 of this title, and the Water and Sanitation Codes, as compiled in 21 DCMR 700, et seq.

***Explanatory Note.** This section establishes a special enforcement provision for the revised illegal dumping chapter and other specified District laws and regulations. This enforcement provision replaces current D.C. Code § 8-903.*

The revised enforcement provision is unchanged from current D.C. Code § 8-903. It provides that the Mayor may establish a special law enforcement unit with police powers to enforce the revised illegal dumping chapter,¹⁰³ as well as other specified current District laws and regulations. “Mayor” is a defined term in D.C. Code § 8-901.

***Relation to Current District Law.** The revised enforcement statute is unchanged from current District law.*

¹⁰³ The illegal dumping chapter is Chapter 9 in Subtitle B of Title 8 of the D.C. Code.

§ 8-904. Bounty.

The Mayor is authorized to offer and pay rewards for information that, in the opinion of the Mayor, leads to the apprehension and charging of any person for violating § 8-902(a) or (b) and the collection of a penalty or fine from the person.

***Explanatory Note.** This section establishes a bounty provision for the revised illegal dumping statute. This bounty provision replaces current D.C. Code § 8-904.*

The revised bounty provision is substantively unchanged from current D.C. Code § 8-904.¹⁰⁴ It provides that the Mayor may offer and pay rewards for information that, in the opinion of the Mayor, leads to the apprehension and charging of any person for violating the revised illegal dumping statute and the collection of a penalty or fine from that person. “Mayor” is a defined term in D.C. Code § 8-901.

***Relation to Current District Law.** The revised bounty statute is unchanged from current District law.¹⁰⁵*

¹⁰⁴ The revised bounty statute refers to violations of D.C. Code “§ 8-902(a) or (b)” because the revised illegal dumping statute codifies the offense in two subsections, one for the felony gradation and one for the misdemeanor gradation. In contrast, the current bounty statute refers to violations of “§ 8-902(a)” because it codifies the offense in one subsection.

¹⁰⁵ The revised bounty statute refers to violations of D.C. Code “§ 8-902(a) or (b)” because the revised illegal dumping statute codifies the offense in two subsections, one for the felony gradation and one for the misdemeanor gradation. In contrast, the current bounty statute refers to violations of “§ 8-902(a)” because it codifies the offense in one subsection.

§ 8-905. Civil Forfeitures.

- (a) *Property subject to forfeiture.* A motor vehicle is subject to forfeiture when:
 - (1) In fact, the motor vehicle is possessed with intent to be used to facilitate a violation of this chapter; or
 - (2) In fact, the motor vehicle is used to facilitate a violation of this chapter.
- (b) *Requirements for forfeiture.* All seizures and forfeitures under this section shall be pursuant to the standards and procedures set forth in Chapter 3 of Title 41.
- (c) *Costs for towing and storing.*
 - (1) The Mayor is authorized to establish and collect a reasonable fee for the cost of towing and storing seized motor vehicles.
 - (2) A storage fee shall not be charged for the first 24-hour period following the seizure of a motor vehicle.
 - (3) If a person is found not liable for a violation of this chapter, the Mayor shall waive any towing and storage fees assessed under this chapter and refund any penalties paid.

***Explanatory Note.** This section establishes requirements and procedures for the civil forfeiture of motor vehicles that are intended to be used, or are used, in violation of the illegal dumping chapter. All seizures and forfeitures under this section shall be pursuant to Chapter 3 of Title 41 (D.C. Law 20-278). The revised statute replaces the current forfeiture statute applicable to the current illegal dumping chapter.*

Subsection (a) establishes two alternative bases for civil forfeiture of a motor vehicle.

The first alternative basis is under paragraph (a)(1)—the motor vehicle must be possessed with intent to be used to facilitate a violation of this chapter.¹⁰⁶ Paragraph (a)(1) specifies “in fact”, a defined term in RCC § 22A-207 that indicates there is no culpable mental state for a given element—here the fact that the property is a “motor vehicle”. “Motor vehicle” is a defined term in D.C. Code § 8-901. “Possess” is defined in RCC § 22A-101 as either to “hold or carry on one’s person” or to “have the ability and desire to exercise control over.” “Intent” is a defined term in RCC § 22A-206 that here means a person was practically certain that the motor vehicle would be used to facilitate a violation of this chapter.¹⁰⁷

Paragraph (a)(2) specifies the second alternative basis for civil forfeiture under the revised statute—a motor vehicle must be used to facilitate a violation of this chapter.¹⁰⁸ “Motor vehicle” is a defined term in D.C. Code § 8-901. Paragraph (a)(2) specifies “in fact”, a defined term in RCC § 22A-207 that indicates there is no culpable mental state for a given element. Here, “in fact” means that there is no culpable mental state required for the fact that the property is a motor vehicle used to facilitate a violation of this chapter.

¹⁰⁶ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 of Subtitle B of Title 8 of the D.C. Code.

¹⁰⁷ Per RCC § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the person’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the motor vehicle was used to facilitate a violation of the chapter, just that a person believed to a practical certainty that the motor vehicle would be so used. Applying the RCC definition of “intent” does not change the mental state requirements for forfeiture in D.C. Law 20-278.

¹⁰⁸ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 of Subtitle B of Title 8 of the D.C. Code.

Paragraph (b) establishes that the seizures and forfeitures under this section shall be pursuant to the standards and procedures set forth in Chapter 3 of Title 41 (D.C. Law 20-278).

Paragraph (c) establishes permissible towing and storage fees for seized motor vehicles.

Relation to Current District Law. Two aspects of the revised civil forfeiture statute may constitute substantive changes to current District law.

First, the RCC definition of “intent to” applies to the revised forfeiture provision. The current D.C. Code illegal dumping forfeiture provision applies, in relevant part, to all motor vehicles that are “intended to be used” to violate the illegal dumping chapter.¹⁰⁹ The meaning of “intended to” is unclear and there is no DCCA case law on this issue. Resolving this ambiguity, the revised illegal dumping forfeiture statute applies the definition of “intent” in RCC § 22A-206. “Intent” is a defined term in RCC § 22A-206 that here means the actor was practically certain that the property would be used to facilitate a violation of the illegal dumping chapter.¹¹⁰ Applying the RCC definition of “intent” does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹¹¹ This change improves the clarity, consistency, and proportionality of the revised statutes.

Second, the revised statute establishes that strict liability is a distinct basis for forfeiture. The current D.C. Code illegal dumping forfeiture statute applies, in relevant part, to motor vehicles that “are used” to violate the illegal dumping chapter.¹¹² It is unclear whether “are used” applies strict liability. There is no DCCA case law on this issue. Resolving this ambiguity, the revised illegal dumping forfeiture statute, by use of the phrase “in fact,” clarifies that strict liability as to use is a distinct basis for forfeiture. Applying strict liability does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹¹³ This change improves the clarity, consistency, and proportionality of the revised statutes.

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

¹⁰⁹ D.C. Code § 8-905.

¹¹⁰ Relying on the RCC definition of “intent” may produce an additional change to current District law. Under the RCC, the “intent” mental state may be satisfied by knowledge of a circumstance or result. The RCC also provides that knowledge of a circumstance may be imputed if a person is reckless as to whether the circumstance exists, and with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists. Applied to this forfeiture provision, if an owner does *not* know that property is to be used to violate the illegal dumping offense, but was reckless as to this fact, and avoided investigating whether this circumstance exists in order to avoid criminal liability, the imputation rule may allow a fact finder to impute knowledge to the owner. It is unclear under current District law whether a similar rule of imputation would apply. Current D.C. Code § 41-302 states that “[n]o property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.” D.C. Code § 41-302(b). However, this provision applies when an actual *act or omission* is the basis for forfeiture. It is unclear whether an owner’s willful blindness as to *intended* uses of property still authorizes civil forfeiture. If this provision does apply even when property has not yet been used, the term “willfully blind” is undefined, and it is unclear how it differs from the deliberate ignorance provision under the RCC.

¹¹¹ See, e.g., D.C. Code § 41-302(b) (“No property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.”).

¹¹² D.C. Code § 8-905.

¹¹³ See, e.g., D.C. Code § 41-302(b) (“No property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.”).

First, the revised statute requires that a motor vehicle be possessed with intent to be used, or actually used, “to facilitate” a violation of this chapter. The equivalent language in the current D.C. Code illegal dumping forfeiture statute is “to transport, or in any manner to facilitate” a violation of the chapter.¹¹⁴ The revised forfeiture statute deletes “to transport, or in any manner” as surplusage. This change improves the clarity of the revised statute.

Second, the revised statute codifies the permissible towing and storage fees for seized motor vehicles. These provisions are currently codified in the illegal dumping statute.¹¹⁵ For clarity, the revised forfeiture statute codifies these provisions instead. The revised illegal dumping statute does not substantively change the provisions.

¹¹⁴ D.C. Code § 8-905.

¹¹⁵ D.C. Code § 8-902(e).

§ 8-906. Rules.

The Mayor is authorized to promulgate regulations necessary to implement and enforce this chapter in accordance with subchapter I of Chapter 5 of Title 2.

***Explanatory Note.** This section authorizes the Mayor to promulgate regulations necessary to enforce the revised illegal dumping chapter. This rule provision replaces current D.C. Code § 8-906.*

The revised rules statute is unchanged from current D.C. Code § 8-906. It provides that the Mayor may promulgate regulations necessary to implement and enforce the revised illegal dumping chapter.¹¹⁶ The revised rules statute requires the Mayor to act in accordance with subchapter I of Chapter 5 of Title 2. “Mayor” is a defined term in D.C. Code § 8-901.

***Relation to Current District Law.** The revised rules statute is unchanged from current District law.*

¹¹⁶ “This chapter” refers to the illegal dumping chapter, which is Chapter 9 of Subtitle B of Title 8 of the D.C. Code.

Appendix A – Black Letter Text of Draft Revised Statutes

§ 8-901. Definitions.

For the purposes of this chapter, the term:

- (1) “Actor” means a person accused of a criminal offense.
- (2) “Disposes” means:
 - (A) Discharges, deposits, dumps, or places; or
 - (B) Allows, as an employer or manager, a subordinate to discharge, deposit, dump, or place.
- (3) “Hazardous waste” means any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics:
 - (A) May cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating, reversible, illness;
 - (B) May pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; including, but not limited to, wastes which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste; or
 - (C) Is identified as hazardous waste in D.C. Mun. Regs. tit. 20, § 4261.3, or is established by the Mayor as hazardous waste.
- (4) “In fact” shall have the same meaning as provided in § 22A-207.
- (5) “Intentionally”, and other parts of speech, including “intent”, shall have the same meaning as provided in § 22A-206.
- (6) “Knowingly”, and other parts of speech, including “know”, “known”, “knows”, “knowing”, and “knowledge”, shall have the same meaning as provided in § 22A-206.
- (7) “Mayor” means the Mayor of the District of Columbia.
- (8) “Medical waste” means waste from medical research, medical procedures, or pathological, industrial, or medical laboratories. Medical waste includes, but is not limited to, the following types of solid waste:
 - (A) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the

- production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;
- (B) Pathological waste, including tissues, organs, and body parts that are removed during surgery or autopsy;
 - (C) Human blood waste and products of blood, including serum, plasma, and other blood components;
 - (D) Sharps that have been used in patient care or medical research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades;
 - (E) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;
 - (F) Waste from surgery or autopsy that was in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;
 - (G) Laboratory waste from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that was in contact with infectious agents, including slides, and cover slips, disposable gloves, laboratory coats, and aprons;
 - (H) Dialysis waste that was in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;
 - (I) Discarded medical equipment and parts that were in contact with infectious agents;
 - (J) Biological waste and discarded materials contaminated with blood, excretion, exudates and secretion from human beings or animals who are isolated to protect others from communicable diseases; and
 - (K) Such other waste material that results from the administration of medical care to a patient by a health care provider that poses a threat to human health or the environment, or is found by the Mayor to do so.
- (9) “Motor vehicle” means any conveyance propelled by an internal combustion engine, electricity, or steam.
- (10) “Person” means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District of Columbia or federal government, or any other entity.
- (11) “Possess”, and other parts of speech, including “possesses”, “possessing”, and “possession”, shall have the same meaning as provided in § 22A-101.
- (12) “Recklessly”, and other parts of speech, including “reckless” and “recklessness”, shall have the same meaning as provided in § 22A-206.

- (13) “Waste” means combustible or incombustible refuse. Waste includes appliances, furniture, mattresses, shopping carts, tires, dirt, sand, sawdust, gravel, clay, loam, stone, rocks, rubble, building rubbish, shavings, trade or household waste, refuse, ashes, manure, vegetable matter, paper, dead animals, garbage or debris of any kind, any other organic or inorganic material or thing, or any other offensive matter.

§ 8-902. Illegal Dumping.

- (a) *First degree.* An actor commits first degree illegal dumping when the actor:
- (1) Knowingly disposes waste in the District of Columbia; and
 - (2) Does so:
 - (A) With intent that any person receives economic gain as a result; or
 - (B) With recklessness as to the fact that the waste is either:
 - (i) Medical waste; or
 - (ii) Hazardous waste.
- (b) *Second degree.* An actor commits second degree illegal dumping when the actor knowingly disposes waste in the District of Columbia.
- (c) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the site of disposal is authorized for the disposal of waste by the Mayor of the District of Columbia.
- (d) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of subsection (b) of this section.
- (e) *Criminal penalties.*
- (1) First degree illegal dumping is a felony, and shall be subject to a fine for each offense not to exceed \$40,000, or a term of imprisonment not to exceed 5 years, or both.
 - (2) Second degree illegal dumping is a misdemeanor, and shall be subject to a fine not to exceed \$5,000 for the first offense and \$10,000 for each subsequent offense, or a term of imprisonment not to exceed 90 days, or both.
 - (3) The fines set forth in this subsection shall not be limited by § 22-3571.01.
- (f) *Civil penalties.*
- (1) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this chapter, or any rules or regulations issued under the authority of this chapter, provided that a civil fine up to \$10,000 may be assessed for each offense.
 - (2) Any person who knowingly disposes of hazardous waste in violation of this chapter shall be liable for a civil penalty in an amount not to exceed \$40,000 for each violation.
 - (3) Adjudication of any civil infraction of this chapter shall be enforced by the Mayor pursuant to § 8-802.
- (g) *Motor vehicle forfeiture.*
- (1) In addition to any other penalties provided in this section, a person's ownership interest in a motor vehicle used in violating this chapter shall be subject to seizure and forfeiture.
 - (2) All seizures and forfeitures of motor vehicles under this chapter shall be in accordance with § 8-905.

- (h) *Reimbursement of costs.* Any person violating subsection (a) or (b) of this section shall also be liable and responsible for paying 3 times the cost and expense incurred by the Mayor for cleaning and clearing the site where the unlawful disposal occurred and for properly disposing of the waste. Payment shall be made within 10 days of demand by the Mayor.
- (i) *Loss of license, permit, or registration.*
 - (1) The Mayor may deny, revoke, or not renew, for a period of not less than 30 days, the business license, permit, or motor vehicle registration issued, or to be issued, to any person who has committed a violation of this chapter, provided that the business license, permit, or motor vehicle registration is substantially related to the commission of the offense of illegal dumping of waste in the District of Columbia.
 - (2) The business license, permit, or motor vehicle registration may not be issued or reissued for a period of not less than 30 days and until all fines, penalties, and fees assessed under this section have been fully satisfied.
- (j) *Other sanctions.* The Mayor may impose any sanction provided in Chapter 8 of this title, to the extent that it is not inconsistent with this chapter.
- (k) *Civil enforcement authority.* In addition to or in lieu of enforcement by the Mayor pursuant to subsection (f) or (j) of this section or criminal enforcement of subsection (a) or (b) of this section, the Attorney General for the District of Columbia may commence a civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction for damages, civil penalties, cost recovery, reasonable attorney and expert witness fees, and injunctive or other appropriate relief to enforce compliance with this chapter or regulations adopted pursuant to this chapter.
- (l) *Interpretation of statute.* Except for § 22A-101, Chapter 1 of Title 22A of the District of Columbia Code shall apply to this offense.

§ 8-903. Enforcement.

The Mayor may establish a special law enforcement unit with police powers to enforce this chapter, Chapter 8 of this title, Chapter 13 of this title, subchapter II of Chapter 1 of this title, and the Water and Sanitation Codes, as compiled in 21 DCMR 700, et seq.

§ 8-904. Bounty.

The Mayor is authorized to offer and pay rewards for information that, in the opinion of the Mayor, leads to the apprehension and charging of any person for violating § 8-902(a) or (b) and the collection of a penalty or fine from the person.

§ 8-905. Civil Forfeitures.

- (a) *Property subject to forfeiture.* A motor vehicle is subject to forfeiture when:
 - (1) In fact, the motor vehicle is possessed with intent to be used to facilitate a violation of this chapter; or
 - (2) In fact, the motor vehicle is used to facilitate a violation of this chapter.

- (b) *Requirements for forfeiture.* All seizures and forfeitures under this section shall be pursuant to the standards and procedures set forth in Chapter 3 of Title 41.
- (c) *Costs for towing and storing.*
 - (1) The Mayor is authorized to establish and collect a reasonable fee for the cost of towing and storing seized motor vehicles.
 - (2) A storage fee shall not be charged for the first 24-hour period following the seizure of a motor vehicle.
 - (3) If a person is found not liable for a violation of this chapter, the Mayor shall waive any towing and storage fees assessed under this chapter and refund any penalties paid.

§ 8-906. Rules.

The Mayor is authorized to promulgate regulations necessary to implement and enforce this chapter in accordance with subchapter I of Chapter 5 of Title 2.