



Report # 84

Private Bribery Offenses

June 16, 2025

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

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

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

Appendices to this report are:

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

A copy of this document and other work by the CCRC is available on the agency website at www.ccrdc.dc.gov.

Report #84 – Private Bribery Offenses

Draft RCC Text and Commentary

Corresponding D.C. Code statutes in {}

- § 22A-3311. Bribery of a neutral or independent official. {D.C. Code § 22-704}
- § 22A-3312. Solicitation or acceptance of bribe by a neutral or independent official.
{D.C. Code § 22-704}

§ 22A-3311. Bribery of a neutral or independent official.

- (a) *Offense.* An actor commits bribery of a neutral or independent official when the actor:
- (1) Knowingly offers, gives, or agrees to give any personal benefit, directly or indirectly, to a neutral or independent official with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interests of another person;
 - (2) With intent that the personal benefit be in exchange for an agreement or understanding that the neutral or independent official will engage in conduct that violates their legal, professional, or contractual duty in the matter; and
 - (3) Is reckless as to the fact that the violation affects the financial or legal interests of another person.
- (b) *Penalty.* Bribery of a neutral or independent official is a Class A misdemeanor.
- (c) *Definitions.* In this section, the term, “neutral or independent official” means any person held out to be neutral or independent and given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. The term does not include “public servants” as defined in §22A-101 acting in an official role.

***Explanatory Note.** The revised bribery of a neutral or independent official prohibits bribing or attempting to bribe a neutral or independent official by offering, giving, or agreeing to give the official any personal benefit in exchange for an agreement or understanding that the official will engage in certain conduct related to their role in a matter affecting the financial or legal interests of another person. There are no penalty gradations for the offense. The revised bribery of a neutral or independent official offense replaces § 22-704(b) of the corrupt influence statute in current law.*

Subsection (a) specifies the prohibited conduct for the bribery of a neutral or independent official offense. Paragraph (a)(1) requires that an actor “knowingly offers, gives, or agrees to give any personal benefit, directly or indirectly, to a neutral or independent official with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interests of another person.” “Knowingly” is defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements after the term knowingly, unless and until another mental state is specified. Here, the knowingly culpable mental state means the actor must be practically certain that they are: (1) offering, giving, or agreeing to give (2) a personal benefit (3) to a neutral or independent official with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interest of another person. “Personal benefit” and “person” are defined terms in § 22A-101. “Neutral or independent official” is a defined term in subsection (c) of the offense. The term “personal benefit” encompasses benefits to third persons or entities when the beneficiary has a

significant personal interest in the welfare of the third person or entity.¹ The term “person” includes any “individual, whether living or dead, as well as a trust, estate, fiduciary, partnership, company, corporation, association, organization, union, government, government agency, or government-owned corporation, or any other legal entity.”

Paragraph (a)(2) specifies that the actor must offer, give, or agree to give any personal benefit to a neutral or independent official with intent that the personal benefit be in exchange for an agreement or understanding that the neutral or independent official will violate their legal, professional, or contractual duty in the matter. The words “offer” and “agree” clarify that bribery of a neutral or independent official does not require that the actor actually provided a personal benefit. Merely offering to provide a personal benefit satisfies the element under (a)(2) even if the neutral or independent official refuses to accept the benefit. The word “agree” clarifies that the actor need not actually provide the personal benefit or instigate the transaction. For example, if a neutral or independent official requests that an actor provide a personal benefit, if the actor agrees to do so then the element under (a)(2) is satisfied even if the actor does not actually provide the personal benefit. “Intent” is a defined term in § 22A-206 that here means the actor practically certain that the personal benefit was being given, offered, or agreed to in exchange for an agreement or understanding that the neutral or independent official would violate a legal, professional, or contractual duty in the matter. Per § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. Thus, it is not necessary to prove the neutral or independent official actually accepted or agreed to accept the personal benefit in exchange for violating their duty. Likewise, it is not necessary to prove that the neutral or independent official actually violated a legal, professional, or contractual duty. Rather, the government need only show that the actor was practically certain that they were offering, giving, or agreeing to give a personal benefit in exchange for an agreement or understanding that the neutral or independent official would engage in such conduct.

Paragraph (a)(3) requires that the actor’s conduct be reckless as to the fact that the neutral or independent official’s violation of a legal, professional, or contractual duty affects the legal or financial interests of another person. “Reckless” is a defined term in § 22A-206(c). Applied here it requires that the actor consciously disregarded a substantial risk that the neutral or independent official’s violation of a legal, professional, or contractual duty affects the legal or financial interests of another person. Further, the “reckless” mental state requires that the risk be of such a nature and degree that, considering the nature of and motivation for the person’s conduct and the circumstances the person is aware of, the person’s conscious disregard of that risk is a gross deviation from the standard of conduct that a reasonable individual would follow in the person’s situation. “Person” is a defined term in § 22A-101 that includes any “individual, whether living or dead, as well

¹ For example, a parent may have a significant interest in the welfare of their child. If an actor offered to invest in the company belonging to the child of a neutral or independent official, the investment would likely constitute a personal benefit to the neutral or independent official even though the official did not directly obtain a gain or advantage.

as a trust, estate, fiduciary, partnership, company, corporation, association, organization, union, government, government agency, or government-owned corporation, or any other legal entity.”

Subsection (b) specifies the penalty classification for bribery of a neutral or independent official. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (c) defines the term “neutral or independent official”. The term neutral or independent official includes “any person held out to be neutral or independent and given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. The term does not include “public servants” as defined in §22A-101 acting in an official role.

Relation to Current District Law. *The revised bribery of a neutral or independent official statute changes District law in four main ways.*

First, the bribery of a neutral or independent official statute proscribes bribery in purely private matters as a stand-alone offense under the RCC fraud statutes. Bribery of certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which prohibits corrupting or attempting to corrupt any “special master, auditor, juror, arbitrator, umpire, or referee.” Although there is no case law on point, the plain language of the statute appears to cover bribery of those officials in purely private or purely public matters. Although bribes of neutral and independent officials in private matters constitute culpable conduct, they do not constitute the type of public corruption that undermines faith in the government and public institutions. Rather, bribery of officials held out to be neutral or independent in private matters implicates individual interests protected by fraud statutes.² Accordingly, the RCC bribery of a neutral or independent official proscribes bribes of neutral and independent officials in private matters as a form of fraud while bribery in public matters, including bribes of court appointed neutrals, is covered by the bribery of a public servant statute³ as a form of public corruption. This change improves the clarity, consistency, and proportionality of District law.

Second, the revised bribery of a neutral or independent official statute applies to all persons, other than public servants, given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. Bribery of certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b), which prohibits corrupting or attempting to corrupt an enumerated

² Private parties typically engage neutral and independent officials and consent to grant them authority in private matters for the purpose of having the matter decided or handled by persons held out to be honest and impartial. When a neutral or independent official violates their duty of honesty or impartiality by accepting a bribe and performing their duties in a biased or dishonest way, their authority is consented to only because the parties unaware of the bribe have been deceived by a promise of honesty and impartiality. Although this type of deception does not bear on the general public trust because it occurs in purely private matters, criminal liability is appropriate when a person’s legal or financial interests are harmed because private parties acquiesced to a grant of authority under the pretense that it would be exercised honestly and impartially.

³ § 22A-4101.

list of officials with no catchall provision to cover neutral or independent officials not named in the statute. Specifically, the statute applies to any “special master, auditor, juror, arbitrator, umpire, or referee” but does not apply to other neutral or independent officials with similar authority and responsibility such as appraisers or mediators. To ensure that neutral and independent officials with comparable roles are covered by the statute, the revised bribery of a neutral or independent official statute defines neutral or independent official to comprise all persons other than public servants⁴ given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or makes. This change closes a gap in liability and improves the clarity of District law.

Third, the bribery of a neutral or independent official statute requires that the bribe affect the legal or financial interests of another person. Bribery of certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which prohibits gifts or gratuities intended to bias the opinion or influence the decision of an official in any matter pending before the official or in which they have been chosen or appointed to render a decision. The statute does not have a threshold regarding the seriousness of the matter and does not require that the bias have the potential to cause non-trivial harm. For example, the statute covers umpires without regard to the level of competition. While bribery of an umpire in a major league baseball game has major consequences for the financial or legal interests of many people,⁵ bribing an umpire in recreational t-ball game played by six-year-old children is unlikely to cause the type of harm warranting liability under criminal law. Accordingly, the RCC bribery of a neutral or independent official statute requires that the bribe be for a violation of a legal, professional, or contractual duty that could affect the legal and financial interests of another person. This change improves the proportionality of District law.

Fourth, the revised bribery of a neutral or independent official offense applies to bribes made in exchange for an agreement or understanding that the neutral or independent official will violate a legal, professional, or contractual duty to act honestly and impartially in a private matter. Bribery of certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which appears to cover officials in both private and public matters. That statute requires the person to act “with the intent to bias the opinion, or to influence the decision” of an official but does not clearly define the terms “bias” or “influence” and there is no DCCA case law on point. In contrast, the revised bribery of a neutral or independent official statute specifies that the intended exchange must be for an agreement or understanding that the official will violate their legal, professional, or contractual duty of honesty or impartiality in a matter. The interests harmed by private bribery schemes differ from the interests harmed by bribery of public officials. Private parties engage neutral and independent officials and grant them authority in private matters for the purpose of having the matter decided or handled by persons held out to be honest and impartial. When a neutral or independent official violates

⁴ “Public servant” is a defined term in § 22A-101 that includes jurors and court-appointed neutrals. Accordingly, jurors, court-appointed special masters, and other neutrals in public matters are covered by the bribery of a public servant offense and not the bribery of a neutral or independent official offense.

⁵ This conduct may also violate the rigging a publicly exhibited contest offense in § 22A-5702.

their duty of honesty or impartiality by accepting a bribe and performing their duties in a biased or dishonest way, their authority is consented to only because the parties unaware of the bribe have been deceived by a promise of honesty and impartiality. By prohibiting bribes of neutral and independent officials related to their legal, professional, or contractual duties of honesty or impartiality, the revised bribery of a neutral or independent official statute focuses on fraud perpetrated on private parties that may have no impact on public trust. This change improves the consistency and proportionality of District law.

Beyond these four changes to Current District law, one other aspect of the revised statute may constitute a substantive change to District law.

The revised bribery of a neutral or independent official statute specifies a knowingly mental state with respect to the bribe. Bribery of certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which appears to cover officials in both private and public matters. That statute requires the person to act “with the intent to bias the opinion, or to influence the decision.” The phrase “with intent,” has not been clearly defined as requiring knowledge or purpose in District case law generally.⁶ To resolve any ambiguity, the revised bribery of a neutral or independent official statute requires a knowingly mental state with respect to the bribe.⁷ Applying a knowing culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.⁸ Requiring a knowing culpable mental state also makes the revised statute consistent with the conduct elements of other bribery statutes.⁹ This change improves the clarity and consistency of the revised statutes.

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

⁶ See RCCA commentary to § 22A-206.

⁷ Section 22A-206 of the revised criminal code clearly defines “with intent” as used in subparagraph (a)(2) to be a knowingly mental state.

⁸ See *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

⁹ See § 22A-4101 (Bribery of a public servant) and § 22A-4102 (Solicitation or acceptance of a bribe by a public servant).

§ 22A-3312. Solicitation or acceptance of a bribe by a neutral or independent official.

- (a) *Offense.* An actor commits solicitation or acceptance of a bribe by a neutral or independent official when the actor:
 - (1) Is, in fact, a neutral or independent official with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interests of another person;
 - (2) Knowingly solicits, demands, accepts, or agrees to accept any personal benefit, directly or indirectly, from another person;
 - (3) With intent that the personal benefit be in exchange for an agreement or understanding that the actor will engage in conduct that violates their legal, professional, or contractual duty in the matter; and
 - (4) Is reckless as to the fact that the violation affects the financial or legal interests of another person.
- (b) *Penalty.* Solicitation or acceptance of a bribe by a neutral or independent official is a Class A misdemeanor.
- (c) *Definitions.* In this section, the term, “neutral or independent official” means any person held out to be neutral or independent and given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. The term does not include “public servants” as defined in §22A-101 acting in an official role.

***Explanatory Note.** The revised solicitation or acceptance of a bribe by a neutral or independent official statute prohibits neutral and independent officials in private matters from soliciting, demanding, accepting, or agreeing to accept personal benefits in exchange for an agreement or understanding that the official will engage in certain conduct related to their role in a matter affecting the financial or legal interests of another person. There are no penalty gradations for the offense. The solicitation or acceptance of a bribe by a neutral or independent official offense replaces § 22-704(b) of the corrupt influence statute in current law.*

Subsection (a) specifies the elements for the solicitation or acceptance of bribe by a neutral or independent official offense. Paragraph (a)(1) requires as a circumstance element that the actor be a “neutral or independent official” with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interests of another person. The use of “in fact” in paragraph (a)(1) indicates that there is no culpable mental state with respect to the actor’s status as a neutral or independent official with one of the specified duties of impartiality in a matter affecting the financial or legal interests of another person. “Person” is a defined term in § 22A-101 applicable to subtitle III offenses. The term “person” includes any “individual, whether living or dead, as well as a trust, estate, fiduciary, partnership, company, corporation, association, organization, union, government, government agency, or government-owned corporation, or any other legal entity.” “Neutral or independent official” is defined in paragraph (c) of the offense.

Paragraph (a)(2) requires that the actor “knowingly solicits, demands, accepts, or agrees to accept any personal benefit, directly or indirectly, from another person.” The culpable mental state is “knowingly,” a defined term in § 22A-206. Per the rule in § 22A-207, the term “knowingly” applies to all elements in (a)(2) and after, unless and until another mental state is specified. Here, the “knowingly” mental state requires that the actor must be practically certain that they are soliciting, demanding, accepting, or agreeing to accept a “personal benefit” from another person. “Personal benefit” is a defined term in § 22A-101.¹⁰ The term “personal benefit” encompasses benefits to third persons or entities when the beneficiary has a significant personal interest in the welfare of the third person or entity.¹¹

Paragraph (a)(3) specifies that the actor must solicit, demand, accept, or agree to accept the personal benefit “with the intent that the personal benefit be in exchange for an agreement or understanding that the actor will violate a legal, professional, or contractual duty of honesty or impartiality in a matter. The words “solicit” and “demand” clarify that solicitation of a bribe by a neutral or independent official does not require that the actor actually received a personal benefit. Merely soliciting or demanding a personal benefit satisfies the element under (a)(3) even if no other person provides or offers a personal benefit to the neutral or independent official in response to the solicitation or demand. The phrases “agree” and “agrees to accept” clarifies that the actor need not instigate the transaction. “Intent” is a defined term in RCCA § 22A-206 that here means the actor was aware or practically certain that the personal benefit was given in exchange for an agreement or understanding that the actor would violate a legal, professional, or contractual duty of honesty or impartiality. Per the rule in § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. Thus, it is not necessary to prove the actor actually reached an agreement or understanding with another person that the actor would violate their legal, professional, or contractual duty or honesty or impartiality. Likewise, it is not necessary that the actor actually violate their legal, professional, or contractual duty of honesty or impartiality. Rather, paragraph (a)(3) requires only that the actor knew or was practically certain that the personal benefit was solicited, demanded, accepted, or agreed to in exchange for an agreement or understanding that the actor would engage in such conduct.

Paragraph (a)(4) requires that the actor’s conduct be reckless as to the fact that the actor’s violation of a legal, professional, or contractual duty of honesty or impartiality affects the legal or financial interests of another person. “Reckless” is a defined term in § 22A-206(c). Applied here it requires that the actor consciously disregarded a substantial risk that their violation of a legal, professional, or contractual duty of honesty or impartiality affects the legal or financial interests of another person. Further, the “reckless”

¹⁰ “Personal benefit” means any gain or advantage to the beneficiary personally, including a gain or advantage to any person or entity in whose welfare the beneficiary has a significant personal interest.

¹¹ For example, a parent may have a significant interest in the welfare of their child. If an actor offered to invest in the company belonging to the child of a neutral or independent official, the investment would likely constitute a personal benefit to the neutral or independent official even though the official did not directly obtain a gain or advantage.

mental state requires that the risk be of such a nature and degree that, considering the nature of and motivation for the person’s conduct and the circumstances the person is aware of, the person’s conscious disregard of that risk is a gross deviation from the standard of conduct that a reasonable individual would follow in the person’s situation. “Person” is a defined term in § 22A-101 that includes any “individual, whether living or dead, as well as a trust, estate, fiduciary, partnership, company, corporation, association, organization, union, government, government agency, or government-owned corporation, or any other legal entity.”

Subsection (b) specifies the penalty classification for solicitation or acceptance of a bribe by a neutral or independent official. [See §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (c) defines the term “neutral or independent official”. The term neutral or independent official includes “any person held out to be neutral or independent and given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. The term does not include “public servants” as defined in §22A-101 acting in an official role.

Relation to Current District Law. *The revised solicitation or acceptance of a bribe by a neutral or independent official statute changes District law in four main ways.*

First, the solicitation or acceptance of a bribe by a neutral or independent official statute proscribes bribery in purely private matters as a stand-alone offense under the RCC fraud statutes. Solicitation or acceptance of bribes by certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which prohibits special masters, auditors, jurors, arbitrators, umpires, and referees from receiving, offering to receive, or agreeing to receive, a bribe. Although there is no case law on point, the plain language of the statute appears to cover bribery of those officials in purely private or purely public matters. Although solicitation or acceptance of a bribe by a neutral and independent official in a private matter constitutes culpable conduct, it does not constitute the type of corruption that undermines faith in the government and public institutions. Rather, solicitation or acceptance of bribes by officials held out to be neutral or independent in private matters implicates interests protected by fraud statutes.¹² Accordingly, the RCC solicitation or acceptance of a bribe by a neutral or independent official proscribes the solicitation or acceptance of bribes by neutral and independent officials in private matters while solicitation or acceptance of bribes in public matters, including by court appointed neutrals, is covered by the solicitation or acceptance

¹² Private parties typically engage neutral and independent officials and consent to grant them authority in private matters for the purpose of having the matter decided or handled by persons held out to be honest and impartial. When a neutral or independent officials violates their duty of honesty or impartiality by accepting a bribe and performing their duties in a biased or dishonest way, their authority is consented to only because the parties unaware of the bribe have been deceived by a promise of honesty and impartiality. Although this type of deception does not bear on the general public trust because it occurs in purely private matters, criminal liability is appropriate when a person’s legal or financial interests are harmed because private parties acquiesced to a grant of authority under the pretense that it would be exercised honestly and impartially.

of a bribe by a public servant statute.¹³ This change improves the clarity, consistency, and proportionality of District law.

Second, the revised solicitation or acceptance of a bribe by a neutral or independent official statute applies to all persons, other than public servants, given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. Solicitation or acceptance of bribes by certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which expressly prohibits “special masters, auditors, jurors, arbitrators, umpires, and referees” from receiving, offering to receive, or agreeing to receive, a bribe. There is no catchall provision to cover neutral or independent officials not named in the enumerated list of officials, such as appraisers or mediators. To ensure that neutral and independent officials with comparable roles are covered by the statute, the revised solicitation or acceptance of a bribe by a neutral or independent official statute defines neutral or independent officials to comprise all persons, other than “public servants,”¹⁴ given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. This change closes a gap in liability and improves the clarity of District law.

Third, the solicitation or acceptance of a bribe by a neutral or independent official statute requires that the bribe affect the legal or financial interests of another person. Solicitation or acceptance of a bribe by certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b) which prohibits special masters, auditors, jurors, arbitrators, umpires, and referees from receiving, offering to receive, or agreeing to receive, a bribe in any matter pending before the official or in which they have been chosen or appointed to render a decision. The statute does not have a threshold regarding the seriousness of the matter and does not require that the bias have the potential to cause non-trivial harm. For example, the statute covers umpires without regard to the level of competition. While acceptance of a bribe by an umpire in a major league baseball game has major consequences for the financial or legal interests of many people,¹⁵ the acceptance of a bribe by an umpire in recreational t-ball game played by six-year-old children is unlikely to cause the type of harm that warrants liability under the criminal code. Accordingly, the RCC solicitation or acceptance of a bribe of a neutral or independent official statute requires that the bribe be for a violation of a legal, professional, or contractual duty that could affect the legal and financial interests of another person. This change improves the proportionality of District law.

Fourth, the revised bribery of a neutral or independent official offense applies to bribes made in exchange for an agreement or understanding that the neutral or independent official will violate a legal, professional, or contractual duty to act honestly and impartially in a private matter. Solicitation or acceptance of a bribe by certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code §

¹³ § 22A-4102.

¹⁴ “Public servant” is a defined term in § 22A-101 that includes jurors and court-appointed neutrals. Accordingly, jurors, court-appointed special masters, and other neutrals in public matters are covered by the solicitation or acceptance of a bribe by a public servant offense and not the solicitation or acceptance of a bribe by a neutral or independent official offense.

¹⁵ This conduct may also violate the rigging a publicly exhibited contest offense in § 22A-5702.

22-704(b) which prohibits special masters, auditors, jurors, arbitrators, umpires, and referees from receiving, offering to receive, or agreeing to receive, a bribe intended to influence or bias their decision or opinion in any matter pending before the official or in which they have been chosen or appointed to render a decision or opinion. That statute requires the person to receive, offer, or agree to receive a bribe from someone acting “with the intent to bias the opinion, or to influence the decision” of an official but does not clearly define the terms “bias” or “influence” and there is no DCCA case law on point. In contrast, the solicitation or acceptance of a bribe by a neutral or independent official statute specifies that the intended exchange must be for an agreement or understanding that the official will violate their legal, professional, or contractual duty of honesty or impartiality in a matter. The interests harmed by private bribery schemes differ from the interests harmed by bribery of public officials. Private parties engage neutral and independent officials and grant them authority in private matters for the purpose of having the matter decided or handled by persons held out to be honest and impartial. When neutral or independent officials violate their duty of honesty or impartiality by soliciting or accepting a bribe and performing their duties in a biased or dishonest way, their authority is consented to only because the parties unaware of the bribe have been deceived by a promise of honesty and impartiality. By prohibiting solicitation or acceptance of bribes by neutral and independent officials related to their legal, professional, or contractual duties of honesty or impartiality, the revised bribery of neutral or independent official statute focuses on fraud perpetrated on private parties that may have no impact on public trust. This change improves the consistency and proportionality of District law.

Beyond these four changes to Current District law, one other aspect of the revised statute may constitute a substantive change to District law.

The revised solicitation or acceptance of a bribe by a neutral or independent official statute specifies a knowingly mental state with respect to the bribe. Solicitation or acceptance of a bribe by certain neutral or independent officials is currently covered under the District’s corrupt influence statute in D.C. Code § 22-704(b), which appears to cover officials in both private and public matters. That statute requires the person to act “with the intent to bias the opinion, or to influence the decision.” The phrase “with intent” has not been clearly defined as requiring knowledge or purpose in District case law generally.¹⁶ To resolve any ambiguity, the revised solicitation or acceptance of a bribe by a neutral or independent official statute requires a knowingly mental state with respect to the bribe.¹⁷ Applying a knowing culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.¹⁸ Requiring a knowing culpable mental state also makes the revised statute

¹⁶ See RCCA commentary to § 22A-206.

¹⁷ Section 22A-206 of the revised criminal code clearly defines “with intent” as used in subparagraph (a)(2) to be a knowingly mental state.

¹⁸ See *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

consistent with the conduct elements of other bribery statutes.¹⁹ This change improves the clarity and consistency of the revised statutes.

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

¹⁹ See, § 22A-4101 (Bribery of a public servant) and § 22A-4102 (Solicitation or acceptance of a bribe by a public servant).

Appendix A – Black Letter Text of Draft Revised Statutes

§ 22A-3311. Bribery of a neutral or independent official.

- (a) *Offense.* An actor commits bribery of a neutral or independent official when the actor:
- (1) Knowingly offers, gives, or agrees to give any personal benefit, directly or indirectly, to a neutral or independent official with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interests of another person;
 - (2) With intent that the personal benefit be in exchange for an agreement or understanding that the neutral or independent official will engage in conduct that violates their legal, professional, or contractual duty in the matter; and
 - (3) Is reckless as to the fact that the violation affects the financial or legal interests of another person.
- (b) *Penalty.* Bribery of a neutral or independent official is a Class A misdemeanor.
- (c) *Definitions.* In this section, the term, “neutral or independent official” means any person held out to be neutral or independent and given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. The term does not include “public servants” as defined in §22A-101 acting in an official role.

§ 22A-3312. Solicitation or acceptance of a bribe by a neutral or independent official.

- (a) *Offense.* An actor commits solicitation or acceptance of a bribe by a neutral or independent official when the actor:
- (1) Is, in fact, a neutral or independent official with a legal, professional, or contractual duty of honesty or impartiality in a matter affecting the financial or legal interests of another person;
 - (2) Knowingly solicits, demands, accepts, or agrees to accept any personal benefit, directly or indirectly, from another person;
 - (3) With intent that the personal benefit be in exchange for an agreement or understanding that the neutral or independent official will engage in conduct that violates their legal, professional, or contractual duty in the matter; and
 - (4) Is reckless as to the fact that the violation affects the financial or legal interests of another person.
- (b) *Penalty.* Solicitation or acceptance of bribe by a neutral or independent official is a Class A misdemeanor.
- (c) *Definitions.* In this section, the term, “neutral or independent official” means any person held out to be neutral or independent and given authority in a matter to adjudicate, decide, mediate, referee, examine, assess, or make recommendations. The term does not include “public servants” as defined in §22A-101 acting in an official role.