# Report #76 - Perjury and Other Official Falsification Offenses

(First Draft)

SUBMITTED FOR PUBLIC COMMENT
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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.

**Written comments on the revisions in this report are welcome from government agencies, criminal justice stakeholders, and the public. Comments should be submitted via email to ccrc@dc.gov with the subject line "Comments on Report #76." The Commission will review all written comments that are timely received. The deadline for the written comments on this Report #76—*Perjury and Other Official Falsification Offenses*, is March 1, 2022 (four weeks from the date of issue). Written comments received after March 1, 2022 may not be reviewed or considered in the agency's next draft (if another draft is deemed necessary) or final recommendations.**

This Report has two main parts: (1) draft statutory text for inclusion in the Revised Criminal Code Act of 2021 (RCCA) the bill submitted to the Council by the CCRC on October 1, 2021; 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.)
- Appendix B – Redlined Text Comparing Draft Revised Statutes with Current D.C. Code 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 #76 – Perjury and Other Official Falsification Offenses**

**Draft RCC Text and Commentary**

Corresponding D.C. Code statutes in {}

**§ 22A-4203. Perjury.**

(a) *Offense.* An actor commits perjury when the actor either:
  (1) Knowingly makes a false statement in an official proceeding; and
    (A) In fact:
      (i) The actor makes the false statement while testifying, orally or in writing, under oath or affirmation attesting to the truth of the statement;
      (ii) The oath or affirmation is administered:
        (I) Before a competent tribunal, officer, or person;
        (II) In a case or matter in which the law authorizes the taking of such an oath or affirmation; and
      (iii) The false statement is material to the course or outcome of the official proceeding; or
  (2) Knowingly makes a false statement in a sworn declaration or unsworn declaration; and
    (A) In fact, the statement is:
      (i) In a writing with a statement indicating that the declaration is made under penalty of perjury;
      (ii) Delivered in a case or matter where the law requires or permits the statement be made in a sworn declaration; and
      (iii) Material to the case or matter in which the declaration is delivered.

(b) *Requirement of Corroboration*. In a prosecution under this section, proof of falsity of a statement may not be established solely by the uncorroborated testimony of a single witness.

(c) *Defenses.* It is a defense to liability under section (a)(1) that, in fact:
  (1) The actor retracted the false statement during the course of the official proceeding;
  (2) The retraction occurred before the falsity of the statement is exposed; and
  (3) The retraction occurred before the false statement substantially affects the proceeding.

(d) *Penalty.* Perjury is a Class 8 felony.

(e) *Definitions*. In this section, the term:
  (1) "Competent" means having jurisdiction over the actor and case or matter;
  (2) "Tribunal" means any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature;
  (3) "Official proceeding" has the meaning specified in § 22A-101;
  (4) "Officer" has the meaning specified in D.C. Code § 1-301.45.
  (5) "Sworn declaration" means a signed record given under oath or affirmation attesting to its truth including a sworn statement, verification, certificate, or affidavit.

(6) "Unsworn declaration" means a declaration in a signed record that is not given under oath but is given under penalty of perjury as specified in D.C. Code § 16-5306 or 28 U.S.C. §1746(2).

***Explanatory Note.*** *The revised perjury statute prohibits two forms of perjury—giving false testimony or the equivalent in an official proceeding and making false declarations made under penalty of perjury. The statute includes a requirement of corroboration and a statutory defense of retraction. There are no penalty gradations. The revised statute, in conjunction with a new offense of perjury by false certification[1], replaces the current perjury statute in D.C. Code § 22-2402.*

Subsection (a) specifies two forms of perjury. Paragraph (a)(1) specifies that an actor commits perjury if the actor "knowingly" makes a false statement in an official proceeding. "Knowingly" is defined term in RCCA § 22A-206, which here, requires the actor must be practically certain that the statements the actor made were false and that the statements were made in an official proceeding. "Official proceeding" is a defined term in RCCA § 22A-701.[2]

Subparagraph (a)(1)(A) specifies three circumstance elements that must exist when the actor makes a false statement in an official proceeding. Subparagraph (a)(1)(A) uses the phrase "in fact," a defined term in RCCA § 22A-207 that indicates there is no culpable mental state requirement for the subsequent elements in sub-subparagraphs (a)(1)(A)(i)-(iii).

Sub-subparagraph (a)(1)(A)(i) requires that the actor make the false statement while testifying pursuant to an oath or affirmation[3] that attests to the truth of the statement. The actor's testimony can be given orally or in writing. Per the rule of interpretation in § 22A-207, the phrase "in fact" in subparagraph (a)(1)(A) applies here, indicating there is no culpable mental state requirement as to whether the statement is made during testimony given under oath or affirmation.

Sub-subparagraph (a)(1)(A)(ii) specifies requirements for the administration of an oath or affirmation in two sub-sub-subparagraphs. First, sub-sub-subparagraph (a)(1)(A)(ii)(I) requires that the oath or affirmation be administered before a competent tribunal, officer, or person. "Competent" is a defined term in paragraph (e)(1) that means having jurisdiction over the actor and case or matter.[4] To satisfy this element, the government must prove that the tribunal, officer, or person had jurisdiction over both the

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[1] *See* RCC § 22A-4204.

[2] "Official Proceeding" means: (A) Any trial, hearing, grand jury proceeding, or other proceeding in a court of the District of Columbia; or (B) Any hearing, official investigation, or other proceeding conducted by the Council for the District of Columbia or an agency or department of the District of Columbia government, excluding criminal investigations.

[3] Under District law an affirmation in lieu of oath has the same effect as an oath. *See* D.C. Code § 14-101 (b) ("Where an application, statement, or declaration is required to be supported or verified by an oath, the affirmation is the equivalent of an oath.").

[4] *Compare* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) ("Competency basically refers to jurisdiction. As under current law, it must be demonstrated that the tribunal, officer, or person had jurisdiction over the defendant and subject matter jurisdiction or authority to consider the issues before it. This requires a showing that the tribunal, officer, or person was properly convened.") (citing *Christoffel v. United States*, 338 U.S. 84 (1949)).

actor and the case or matter. If an oath is taken before a tribunal, officer, or person that has not been properly convened or is acting without the requisite Sub-subparagraph (a)(1)(A)(ii) specifies requirements for the administration of an oath or affirmation in two sub-sub-subparagraphs. First, sub-sub-subparagraph (a)(1)(A)(ii)(I) requires that the oath or affirmation be administered before a competent tribunal, officer, or person. "Competent" is a defined term in paragraph (e)(1) that means having jurisdiction over the actor and case or matter.[5] To satisfy this element, the government must prove that the tribunal, officer, or person had jurisdiction over both the actor and the case or matter. If an oath is taken before a tribunal, officer, or person that has not been properly convened or is acting without the requisite jurisdiction, this element is not satisfied.[6] "Tribunal" and "officer"[7] are defined terms in subparagraphs (e)(2) and (e)(4) respectively. The term "tribunal" includes any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature.[8]

Sub-sub-subparagraph (a)(1)(A)(ii)(II) requires that the oath or affirmation be administered in a case or matter in which the law authorizes the taking of such an oath or affirmation. If the oath or affirmation is not administered in a case or matter where the law authorizes the taking of an oath or affirmation, the fact that the oath or affirmation was administered before a competent tribunal, officer, or person is not sufficient to satisfy this

[5] *Compare* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) ("The term 'competent' is found in the current perjury statute and, as used in the provision, is intended to have the same meaning as in current law. Competency basically refers to jurisdiction. As under current law, it must be demonstrated that the tribunal, officer, or person had jurisdiction over the defendant and subject matter jurisdiction or authority to consider the issues before it. This requires a showing that the tribunal, officer, or person was properly convened.") (citing *Christoffel v. United States*, 338 U.S. 84 (1949)).

[6] *E.g.*, The Council has the power to conduct hearings and compel testimony relating to the affairs of the District. *See* D.C. Code Ann. § 1-204.13(a). When the Council, or any committee or person authorized by it, acts pursuant to this power for a legitimate purpose, it acts with the requisite jurisdiction to establish competency. If, however, the Council or a person authorized by it exceeds its authority or acts for illegitimate purpose not authorized by law, the Council would not have the requisite jurisdiction to satisfy this element merely because Councilmembers are "officers". *See e.g.*, *Christoffel v. United States*, 338 U.S. 84, 88-90 (1949) (where House committee failed to maintain a quorum under committee rules, perjury conviction was not by "competent tribunal," and thus worked a denial of a fundamental right); *compare* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) (stating competency "requires a showing that the tribunal, officer, or person was properly convened").

[7] The term "officer" in District law means "any person authorized by law to perform the duties of the office" and is not intended to refer specifically to police or law enforcement officers. *See* D.C. Code § 1-301.45. Members of the police force take a statutorily required oath of office and would therefore qualify as officers under this definition but would not necessarily have the requisite personal and subject matter jurisdiction to be "competent" under the statute.

[8] *Compare* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) ("[T]he term 'tribunal' means an officer or body having authority to adjudicate matters. Tribunals include, for example, trial courts, grand juries, and certain administrative bodies. As under current law, the provision is not limited to false testimony given before tribunals. The provision is intended to apply as well to false testimony given before other competent bodies and persons.").

element.[9] Per the rule of interpretation in § 22A-207, the phrase "in fact" in subparagraph (a)(1)(A) applies here, indicating there is no culpable mental state requirement as to whether the oath or affirmation be administered before a competent tribunal, officer, or person in a case or matter in which the law authorizes the taking of such an oath.

Sub-subparagraph (a)(1)(A)(iii) requires that the false statement made by the actor be material to the course or outcome of the official proceeding. Per the rule of interpretation in § 22A-207, the phrase "in fact" in subparagraph (a)(1)(A) applies here, indicating there is no culpable mental state requirement as to whether the statement be material to the course or outcome of the official proceeding. Applied here that mean the government need not prove that the actor knew or should have known the false statement was material.

Paragraph (a)(2) specifies as an alternative to (a)(1) that an actor commits if the actor "knowingly" makes a false statement in a declaration. "Knowingly" is defined term in RCCA § 22A-206. Applied here, "knowingly" means that the actor must be practically certain that the statements the actor made were false and that the statements were made in a sworn declaration or an unsworn declaration. "Sworn declaration" and "unsworn declaration" are defined terms in subsection (e).[10]

Subparagraph (a)(2)(A) specifies three circumstance elements that must exist when the actor makes a false statement in a declaration. Subparagraph (a)(2)(A) uses the phrase "in fact," a defined term in RCCA § 22A-207 that indicates there is no culpable mental state requirement for the subsequent elements.

Sub-subparagraph (a)(2)(A)(i) specifies that the false statement made by the actor must be in writing and must include a statement indicating that the declaration is made under penalty of perjury. The government need not prove that the actor put the statement in writing themselves. It is sufficient to prove that the actor attested to the truth of the

[9] A tribunal, officer, or person with jurisdiction over an actor in a particular matter where the administration of an oath or affirmation is authorized may place the actor under oath or affirmation in that particular matter. However, the fact that the tribunal, officer, or person has authority to administer an oath or affirmation with respect to a particular matter does not mean they may administer an oath or affirmation in another matter where the tribunal, officer, or person lacks authority to administer an oath or affirmation. *See also Shelton v. United States*, 165 F.2d 241, 83 (D.C. Cir. 1947) (holding that an oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of perjury statute); *Nelson v. United States*, 288 F.2d 376 (D.C. Cir. 1961) (holding that a perjury indictment could not be grounded upon a knowingly false answer to a question placed by the superintendent of insurance, in an application for a license to act as an insurance solicitor, when Congress has not authorized him to make a false answer to a question felonious). For example, a judge presiding over a criminal trial places a witness under oath to provide testimony relevant to the criminal trial. At the conclusion of the witness's testimony, the judge asks the witness probing questions about a dispute in another jurisdiction wholly unrelated to the trial. The witness could be subject to perjury charges for false statements made in relation to the trial. However, any false statements related to the dispute in another jurisdiction would not be subject to prosecution for perjury because the judge had no jurisdiction over that matter.

[10] "Sworn declaration" means a signed record, in fact, given under oath or affirmation attesting to its truth including a sworn statement, verification, certificate, or affidavit. "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is, in fact, given under penalty of perjury as specified in D.C. Code § 16-5306 or 28 U.S.C. § 1746(2).

writing through an acknowledgement.[11] Per the rule of interpretation in § 22A-207, the phrase "in fact" in subparagraph (a)(2)(A) applies here, indicating there is no culpable mental state requirement as to whether the false statement is in writing and includes a statement indicating that the declaration is made under penalty of perjury.

Sub-subparagraph (a)(2)(A)(ii) specifies that the false statement must be delivered in a case or matter where the law requires or permits the statement be made by sworn declaration. The requirement that the statement be delivered means it is insufficient for the government to establish that a false statement was made.[12] Rather, the government must prove that the statement was actually delivered to the case or matter where it was required or permitted. Additionally, this sub-subparagraph requires that the government prove that the law required or permitted the false statement be made in a sworn[13] declaration. This means the government must prove that the case or matter where the false statement was delivered is a case or matter that permits or requires the statement be made under penalty of perjury. It is not sufficient that the signed statement indicates the statement is being made under penalty of perjury if the law does not otherwise authorize or require taking such a statement under threat of penalty. Per the rule of interpretation in § 22A-207, the phrase "in fact" in subparagraph (a)(2)(A) applies here, indicating there is no culpable mental state requirement as to whether the false statement is delivered in a case or matter where the law requires or permits the statement be made by sworn declaration.

Sub-subparagraph (a)(2)(A)(iii) specifies that the false statement must be material to the case or matter in which is delivered. Per the rule of interpretation in § 22A-207, the phrase "in fact" in subparagraph (a)(2)(A) applies here, indicating there is no culpable mental state requirement as to whether the statement is material to the case or matter in which the declaration is delivered.

Subsection (b) specifies that proof of falsity may not be established solely by the uncorroborated testimony of a single witness. The form of corroboration is not specified and can include either additional witnesses or additional evidence.

Subsection (c) specifies that retraction is a defense to liability under section (a)(1) if the conditions specified in paragraphs (c)(1)-(c)(3) are met. Paragraph (c)(1) specifies that the actor must retract the false statement during the course of the official proceeding. The phrase "during the course of the official proceeding" is not limited to the time of the

[11] *See* D.C. Code § 1-1231.01 (West) ("Acknowledgment" means a declaration by an individual that states the individual has signed a record for the purposes stated in the record, and if the record is executed in a representative capacity, that the person signed the record with proper authority and signed it as the act of the individual or entity identified in the record.).

[12] *E.g.*, If an actor makes a false statement in an unsworn declaration under penalty of perjury but places the writing in a drawer and does not deliver the written statement to any party that might rely on it, the actor would not be guilty of perjury.

[13] Pursuant to D.C. Code §16-5306 and 28 U.S.C. § 1746(2), any statement required to be made or permitted to be made by sworn declaration may also be made by an unsworn declaration that satisfies the statute. Thus, the requirement that the statement be delivered in a case or matter where the requires or permits the statement be made by sworn declaration does not change the applicability of the statute to unsworn declarations that satisfy statutory requirements.

actor's participation. [14] Paragraph (c)(2) specifies that the actor must retract the false statement before the falsity is exposed.[15] Paragraph (c)(3) specifies that the actor must retract the false statement before the falsity substantially affects the course of the proceeding. Pursuant to this paragraph, the defense is available even if the proceedings are affected by the false statement as long as they are not substantially affected.[16] Per RCCA § 22A-201(b)(2), if there is any evidence of the retraction defense at trial, the government must prove the absence of at least one of the conditions specified in (c)(1)-(c)(3) beyond a reasonable doubt.

Subsection (d) specifies the penalty classification for perjury. [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (e) cross-references applicable definitions located elsewhere in the code and defines the terms "competent", "tribunal", "official proceeding," "officer," "sworn declaration" and "unsworn declaration".

***Relation to Current District Law.*** *The revised perjury statute changes District law in two main ways.*

First, the revised perjury offense does not address falsification of an acknowledgment or a material matter in an acknowledgement by a notary public or other officer. Current D.C. Code §22-2402(a)(2) specifies that a person commits perjury when the actor "[a]s a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully certifies falsely as to another material matter in an acknowledgement." In contrast, the revised perjury offense removes this enumeration from the perjury statute and creates a new offense of perjury by false certification to address that conduct.[17] This change improves the organization of the revised statutes.

Second, the revised perjury statute specifies a retraction defense for false statements made during an official proceeding. Current District law does not provide a retraction defense in the statute or in case law.[18] Thus, once an actor makes a false statement the

[14] *E.g.*, If an actor makes a false statement while testifying on Day 1 of a trial but retracts the statement on Day 3 of the trial after the actor has been excused as a witness, the retraction would have occurred during the course of the proceedings even though the witness was done testifying. If, on the other hand, the actor retracted the false statement after the conclusion of the trial, the retraction would not have occurred during the course of the official proceeding.

[15] *E.g.*, If an actor retracts a false statement only after being confronted with clear evidence that their statement was false, the retraction defense would not be available.

[16] *E.g.*, An actor makes a false statement about the authenticity of a piece of important evidence that a party is seeking to introduce that results in the evidence being inadmissible at trial. If the actor retracts the statement in time for the party to introduce the evidence without any prejudice to the party, the actor's false statement would not have substantially affected the proceeding. If, however, the actor retracted the statement after the case was sent to the jury without the evidence, the false statement would have already had a substantial effect on the proceedings and the retraction defense would not be available.

[17] *See* RCCA § 22A-4204

[18] *Meyers v. United States*, 171 F.2d 800, 805 (D.C. Cir. 1948) ("The criminal nature of perjury is not removed, the Supreme Court has said, by the fact that the perjurer later in the proceeding states the truth."). Pursuant to its internal policy, the DCCA will only overrule decisions rendered by the United States Court

actor cannot correct the false statement without incriminating themselves in the commission of perjury. This creates an incentive to persist in the falsity rather than come clean with the truth. In contrast, the revised perjury statute contains a retraction defense that applies when a person retracts the false statement during the course of the official proceeding as long as the retraction occurred before the falsity is exposed and before the false statement affects the proceeding. The inclusion of this defense, which is found in the Model Penal Code and numerous other jurisdictions,[19] encourages actors to correct false testimony before it is relied upon in an official proceeding.[20] To prevent abuse of the defense, the retraction defense is only available if the retraction occurs during the official proceeding, before the falsity is exposed, and before it affects the proceeding. This change encourages the discovery of the truth and improves the proportionality of District law.

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

First, the revised perjury statute specifies a culpable mental state of "knowingly" regarding the making of a false statement in an official proceeding. Current D.C. Code § 22-2402(a) requires that an actor ". . . .wilfully and contrary to an oath or affirmation state[] or subscribe[] any material matter which he or she does not believe to be true and which in fact is not true"[21] or "wilfully state[] or subscribe[] as true any material matter that the person does not believe to be true and that in fact is not true."[22] Although the statute uses the term "willfully," the committee report indicates that "the term 'willfully' in this context is intended to mean knowingly and intentionally."[23] Additionally, the language of the perjury statute has previously been interpreted to have the same meaning as "knowingly and intentionally" and to require that an actor knows or believes that the statement they are making is false.[24] Thus, it seems clear that current District law requires a knowing mental state *with respect to the falsity of the statement*. At the same time, the law is silent as to a culpable mental state regarding whether the false statement was made in an official proceeding or declaration and there is no case law indicating a mental state with respect to

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of Appeals prior to February 1, 1971 when the court acts *en banc*. M. A. P. v. Ryan, 285 A.2d 310, 312 (D.C. 1971). To date, *Meyers* has not been overruled by the DCCA.

[19] *See e.g.*, MODEL PENAL CODE § 241.1(4); ALA. CODE. § 13A-10-107; ALASKA STAT. § 11.56.235; ARK. CODE ANN. § 5-53-104; DEL. CODE ANN. § 1231; FLA. STAT. 837.07; HAW. § 710-1064; IOWA CODE § 720.2; KY. REV. STAT. § 523.090; ME. REV. STAT. § 451(1)(B)(3); MO. REV. STAT. § 575.040(4); N.J. REV. STAT. § 2C:28-1; N.D. § 12.1-11-04; OR. REV. STAT. § 162.105; PA. STA. § 18-4902(d); R.I. CODE § 11-33-1; TENN. CODE § 39-16-704; TEX. CODE CRIM. §37.05.

[20] *See State v. Hawkins*, 620 N.W.2d 256, 260 (Iowa 2000) ("The essential purpose of a retraction or recantation defense is to encourage a perjurer to set the record straight, that is, to reveal the truth.").

[21] Applies when the actor has taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered. D.C. Code §22-2402(a)(1).

[22] Applies to statements in any declaration, certificate, verification, or a statement made under penalty of perjury in the form specified in §16-5306 or 28 U.S.C. §1746(2).

[23] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 90 (July 20, 1982).

[24] *See Maragon v. United States*, 187 F.2d 79, 80 (D.C. Cir. 1950) ("While, as we have said before, 'wilfully' in a criminal statute may have any one of a number of meanings, we think it is clear that in the perjury statute it means 'knowingly' or 'intentionally'.").

whether the statement was material. In contrast, the revised perjury statute requires a knowingly mental state with respect to both the falsity of the statement and the fact that the statement is made in an official proceeding or declaration but does not require a culpable mental state with respect to the materiality of the statement. Applying a knowing culpable mental state requirement to statute elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.[25] Requiring that the actor be practically certain that they are making a false statement in an official proceeding or declaration is thus appropriate. However, it is not necessary to apply the knowing mental state to the materiality of the false statement under these circumstances as the actor might not be in a position to assess materiality but will be in a position to understand the importance of providing truthful statements while under oath or in sworn or unsworn declaration irrespective of the actor's assessment of whether the statement is material. This change improves the clarity and consistency of the revised statutes.

Second, the revised perjury statute uses the terms "sworn declaration" and "unsworn declaration" and provides definitions for each term. Current D.C. Code §22-2402(a)(3) applies to "any declaration, certificate, verification, or statement made under penalty of perjury in the form specified in § 16-5306 or 28 U.S.C. § 1746(2)." In the context of perjury, the terms declaration, certificate, and verification can have legal significance beyond their ordinary meaning, but the current statute does not attempt to define the terms. District case law also does not provide clear guidance as to the scope of these terms. In contrast, the revised perjury statute uses the terms "sworn declaration" and "unsworn declaration" and provides definitions for each term. The term "sworn declaration" means a signed record given under oath or affirmation attesting to its truth including a sworn statement, verification, certificate, or affidavit.[26] The term "unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury as specified in D.C. Code § 16-5306 or 28 U.S.C. §1746(2).[27] By specifying that the statute applies to signed records given under oath or affirmation or given under penalty of perjury in the form specified by statute, the revised perjury offense makes clear when the statute applies to a declaration, certificate, verification, or statement. This change improves the clarity of District law.

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

First, the revised perjury statute explicitly states that proof of falsity of a statement may not be established solely by the uncorroborated testimony of a single witness. Current

[25] *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)").

[26] This definition is substantially similar to the definition of "sworn declaration" in D.C. Code § 16-5302(6). The RCC definition inserts the term "affirmation" to reflect applicability to affirmations in lieu of oath.

[27] This definition is substantially similar to the definition of "unsworn declaration" in D.C. Code § 16-5302(7) but specifies, as current law does, that the declaration be given under penalty of perjury as specified in D.C. Code § 16-5306 or 28 U.S.C. §1746(2).

D.C. Code § 22-2402 does not explicitly state that falsity cannot be proven on the uncorroborated testimony of a single witness. Nevertheless, the requirement of corroboration, often referred to as the "two-witness rule"[28] is firmly rooted in DCCA case law.[29] The revised statute codifies the well-established rule in the text of the statute. This change improves the clarity of the statute without changing current District law.

Second, the revised perjury offense provides definitions for the terms "competent", "officer", and "tribunal" in the text of the statute. The definitions are taken from current law[30] and legislative history from the current statute explaining the meaning of certain terms.[31] This change improves the clarity of the statute without changing current District law.

[28] The term "two-witness rule" is a misnomer. Under current law and the revised perjury statute, the government can prove falsity through a single witness and sufficient corroboration of the part of the witness's testimony proving falsity. *See Wilson v. United States*, 194 A.3d 920, 922 (D.C. 2018) ("The requisite corroboration 'need not be sufficient, by itself, to demonstrate guilt,' but it must corroborate 'the part of the primary witness's testimony that proves the falsity of the defendant's statement.'"); *Gaffney v. United States*, 980 A.2d 1190, 1194 (D.C. 2009) ("As explained in *Hsu*, the two-witness rule "is somewhat misnamed today, for while two witnesses will accomplish the task, one witness plus independent corroborative evidence will also suffice.' In the latter case, 'he independent, corroborative evidence need not be sufficient, by itself, to demonstrate guilt; rather, it need only tend to establish an accused's guilt and be inconsistent with the innocence of the defendant when joined with the one direct witness' testimony.' What must be corroborated is the part of the primary witness's testimony that falsifies the defendant's statement. 'Corroboration is required for the perjured fact as a whole,' though, 'and not for every detail or constituent part of it.") (internal citations omitted).

[29] *See e.g.*, *Gaffney v. United States*, 980 A.2d 1190, 1193–94 (D.C. 2009) ("According to the venerable 'two-witness' rule, 'the uncorroborated oath of one witness is not enough to establish the falsity of the testimony of the accused set forth in the indictment as perjury.' The two-witness rule thus 'imposes an evidentiary minimum' that the government must meet to satisfy its burden of proving falsity.") (internal citations omitted); *Hsu v. United States*, 392 A.2d 972, 980–81 (D.C. 1978) (Today, it is "(t)he general rule (that) in prosecutions for perjury . . . the uncorroborated oath of one witness is not enough to establish the falsity of the testimony of the accused set forth in the indictment as perjury."); *Wilson v. United States*, 194 A.3d 920, 922 (D.C. 2018) (quoting *Hsu v. United States*, 392 A.2d 972, 980–81 (D.C. 1978)).

[30] *See* D.C. Code § 1-301.45 (defining "officer"); D.C. Code § 16-5302(6)-(7) (defining "sworn declaration" and "unsworn declaration").

[31] *See* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) (explaining the meaning of "tribunal" and "competent").

**§ 22A-4204. Perjury by false certification.**

(a) *Offense.* An actor commits perjury by false certification when the actor:
  (1) Knowingly makes a false certification of acknowledgement or of another material matter in an acknowledgment; and
  (2) In fact, the actor is a notarial official or other officer authorized to take proof or certification.
(b) *Penalty.* Perjury by false certification is a Class 8 felony.
(c) *Definitions.* The terms "acknowledgement" and "notarial officer" have the same meanings specified in D.C. Code § 1-1231.01 and the term "officer" has the meaning specified in D.C. Code § 1-301.45.

***Explanatory Note.*** *The revised perjury by false certification prohibits the making of a false certification of acknowledgement or other material matters by a notarial official or other authorized officer. The revised perjury by false certification is a new offense that replaces the provision of the current perjury statute dealing with false certification by notary publics and other officers in current D.C. Code §22-402(a)(2).*

Subsection (a) specifies the prohibited conduct for perjury by false certification. Paragraph (a)(1) specifies that an actor commits perjury if the actor "knowingly" makes a false certification[32] of acknowledgement or of another material matter in an acknowledgement. The specified culpable mental state is "knowingly." "Knowingly" is defined term in RCCA § 22A-206, which here requires that the actor must be practically certain that the certification of acknowledgement or other material matter in an acknowledgement was false. "Acknowledgment" is a defined term that means "a declaration by an individual that states the individual has signed a record for the purposes stated in the record, and if the record is executed in a representative capacity, that the person signed the record with proper authority and signed it as the act of the individual or entity identified in the record."[33]

Paragraph (a)(2) specifies that the actor must be a "notarial official" or other officer authorized to take proof or certification. "Notarial officer" is a defined term in D.C. Code §1-1231.01 that means "a notary public or other individual authorized to perform a notarial act."[34] "Officer" is a defined term that includes any person authorized by law to perform the duties of office.[35] Paragraph (a)(2) applies to officers that are authorized by District law to take proof or certification.

[32] *See* D.C. Code §1-1231.14. Certificate of notarial act (specifying requirements for certification of notarial act).
[33] D.C. Code § 1-1231.01(1).
[34] The definition in D.C. Code §1-1231.01 applies to both "notarial officials" and "officers." This definition is found in Chapter 12A. which enacts the Revised Uniform Law on Notarial Acts. The RCCA uses the term "officer", defined in §1-301.45, to encompass "officers" who may potentially be authorized by a law outside of Chapter 12A to take proof or certification.
[35] *See* D.C. Code § 1-301.45.

Subsection (b) specifies the penalty classification for perjury by false certification. [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (c) cross-references applicable definitions located elsewhere in District law.

***Relation to Current District Law.*** *The revised perjury by false certification statute changes District law in one main way.*

The perjury by false certification offense is a new, separate offense, specifically addressing false certifications of acknowledgements or material matters in an acknowledgement by public notaries or other authorized persons. The current perjury statute, D.C. Code § 22-2402, addresses multiple forms of perjury including the conduct prohibited by this statute. In contrast, the revised creates a new, separate offense, of perjury by false certification covering specific conduct by notarial officers performing notarial acts. This change improves the organization of the revised statutes.

*Beyond this one change to Current District law, one other aspect of the revised statute may constitute a substantive change to District law.*

The perjury by false certification statute specifies a culpable mental state of "knowingly" regarding the making of a false statement in an official proceeding. Current D.C. Code § 22-2402(a) requires that a notary public or officer authorized to take proof of certification "wilfully certif[y] falsely that an instrument was acknowledged by any party thereto or wilfully certify[y] falsely as to another material matter . . . ."[36] Although the statute uses only the term "willfully," the committee report indicates that "the term 'willfully' in this context is intended to mean knowingly and intentionally."[37] Additionally, the language of the perjury statute has previously been interpreted to have the same meaning as "knowingly and intentionally" and to require that an actor know or believe that the statement they are making is false.[38] Thus, current District law likely requires a knowing mental state *with respect to the falsity of the certification.* At the same time, it is not clear whether there is a culpable mental state requirement with regard to the materiality requirement for matters other than acknowledgments. The revised perjury by false certification statute requires a knowingly mental state with respect to both the falsity of the certification and the materiality of a matter other than acknowledgement by a party.[39] Applying a knowing culpable mental state requirement to statute elements that distinguish

[36] D.C. Code § 22-2402(a)(2).
[37] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 90 (July 20, 1982).
[38] *See Maragon v. United States*, 187 F.2d 79, 80 (D.C. Cir. 1950) ("While, as we have said before, 'wilfully' in a criminal statute may have any one of a number of meanings, we think it is clear that in the perjury statute it means 'knowingly' or 'intentionally'.").
[39] Materiality is not specified with respect to acknowledgement by a party because the acknowledgment of a party is inherently material to an affidavit or similar document.

innocent from criminal behavior is a well-established practice in American jurisprudence.[40] Requiring that the actor be practically certain that they are making a false certification is thus appropriate. Additionally, it is appropriate to require that the actor be practically certain that the false certification applies to a material matter given the number of non-material things that may be included in affidavit.[41] This change improves the clarity and consistency of the revised statutes.

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

The revised perjury by false certification offense uses the term "notarial officer" instead of notary public. Current D.C. Code § 22-2402(a)(2) proscribes false certification by a "notary public or other officer authorized to take proof of certification." In 2018, the District codified the Revised Uniform Law on Notarial Acts which includes definitions for the terms "notary public" and "notarial officer". Pursuant to the new law, "notarial officer" or "officer" "means a notary public or other individual authorized to perform a notarial act."[42] The revised perjury by false certification statute uses the terms "notarial officer" and "officer" to reach acts by notary publics and any other officer authorized to take proof of certification. The terms are defined in the text of the statute. This change improves the clarity of the statute without changing District law.

[40] *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)").

[41] *E.g.*, if an actor, for expediency purposes, knowingly certifies an acknowledgment that contains errant information that does not appear to be material to the document, it would be inappropriate to hold the actor liable for the felony offense of perjury by false certification.

[42] D.C. Code § 1-1231.01.

**§ 22A-4205. Solicitation of perjury.**

(a) *Offense.* An actor commits solicitation of perjury when the actor:
  (1) Knowingly commands, requests, or tries to persuade another person to engage in conduct, which, if carried out, in fact, will constitute either the offense of perjury or the offense of perjury by false certification under District of Columbia law;
  (2) Acts with the culpability required for the offense of perjury or the offense of perjury by false certification; and
  (3) In fact, the other person engages in conduct which constitutes either the offense of perjury or the offense of perjury by false certification under District of Columbia law.

(b) *Penalty.* Solicitation of perjury is a Class 8 felony.

***Explanatory Note***. *The revised solicitation of perjury offense prohibits solicitation of perjury that results in another person committing the offense of perjury. The revised solicitation of perjury offense replaces the subornation of perjury statute in D.C. Code § 22-2403 and covers certain conduct formerly covered by the obstruction of justice statute, D.C. Code § 22-721.*

Subsection (a) specifies the prohibited conduct for solicitation of perjury. Paragraph (a)(1) provides that an actor commits solicitation of perjury when the actor "knowingly commands, requests, or tries to persuade[43] another person to engage in conduct that, in fact, constitutes either the offense of perjury or the offense of perjury by false certification under District of Columbia law." The specified culpable mental state here is "knowingly". "Knowingly" is defined term in RCCA § 22A-206, and applied here means that the actor must be practically certain that they are commanding, requesting, or trying to persuade another person to engage in specific conduct. The term "command" implies an order or direction, commonly by one with some authority over the other. The term "request" applies when one person explicitly asks another person to engage in specified conduct. Both these terms are direct. The phrase "tries to persuade" covers both direct and indirect attempts[44] to persuade another person and includes coercion. Paragraph (a)(1) further requires that the conduct, if carried out, "in fact" will constitute perjury or perjury

[43] These varying forms of influence may be communicated directly or by an intermediary, through words or gestures, via threats or promises, and occur either before or at the actual time the crime is being committed. It is therefore, immaterial, for purposes of solicitation liability, whether the rational or emotional support is communicated orally, in writing, or through other means of expression. *See e.g.*, WAYNE R. LAFAVE, 2 SUBST. CRIM. L. § 11.1 (3d ed. Westlaw 2019) (stating it is well-established that "solicitation c[an] be committed by speech, writing, or nonverbal conduct); *State v. Johnson*, 202 Or. App. 478, 483-84 (2005) (rejecting "the proposition that the state must produce the actual words used by the solicitor (or, for that matter, that words must be used)"). Nor is proof of a "quid pro quo" between the solicitor and the party solicited necessary; *Id*. at 483-84 (2005) (rejecting "the proposition that the state must prove that the solicitor offered the solicitee a quid pro quo").

[44] *E.g.*, the actor sends a note to another person with a list of reasons why the other person should testify falsely at trial with without expressly requesting or commanding the person to testify false. Assuming the actor sent the note aware or practically certain that sending the note would lead another person testify falsely, this indirect attempt to persuade the other person would satisfy this element.

by false certification. "In fact," is a defined term in RCCA § 22A-207 that indicates there is no culpable mental state requirement as to the fact that the conduct, if carried out, will constitute perjury or perjury by false certification.

Paragraph (a)(2) states that solicitation of perjury incorporates "the culpability required[45] for the offense of perjury or the offense of perjury by false certification." Pursuant to this principle, an actor may not be convicted of solicitation of perjury absent proof that the actor had the culpability required to establish perjury or perjury by certification.[46] Per the rule of interpretation in RCCA § 22E-207, the "in fact" specified in paragraph (a)(1) applies to the elements in paragraph (a)(2) and there is no (additional) culpable mental state required for the fact that the actor acts with the culpability required for the offense.

Paragraph (a)(3) requires as an element that the person who the actor commands, requests, or tries to persuade to engage in conduct constituting perjury or perjury by certification must actually commit the offense of perjury or perjury by false certification under District law.[47] To prove that another person committed the offense of perjury or perjury by certification, each element of the respective offense must be established beyond a reasonable doubt. However, there is no requirement that the other person be separately charged or convicted of perjury or perjury by certification.

Subsection (b) specifies the penalty classification for solicitation of perjury. [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

***Relation to Current District Law.*** *The revised solicitation of perjury statute changes District law in one main way.*

The revised solicitation of perjury statute prohibits certain conduct previously specified in the obstruction of justice statute. Current D.C. Code § 22-722(a)(2) punishes a person who "knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or by threatening letter or communication, endeavors to influence, intimidate, or impede a witness or officer in any official proceeding, with intent to influence, delay, or prevent the truthful testimony of the person in an official proceeding." The RCCA proposes a reorganization of the obstruction of justice statutes that includes, inter alia, a broad catch-all obstruction of justice offense and an independent tampering with a witness or informant offense.[48] These offenses, which also cover conduct designed to cause a witness to testify falsely, now require an attempt to bribe another person or the commission of some criminal offense before liability attaches. The obstruction of

[45] "Culpability required" is a defined term in RCC § 22A-201(e).

[46] *E.g.*, An actor persuades a witness to provide testimony in a trial that the actor believes to be true but the witness knows is false. In that case, the actor knowingly persuaded another person to engage in conduct that would in fact be perjury. However, the actor would not have acted with the requisite culpability for the offense because the actor believed they were soliciting truthful testimony.

[47] If the elements in (a)(1) and (a)(2) are satisfied, but (a)(3) is not satisfied because the other person did not commit the offense of perjury or perjury by certification, an actor could be held liable for attempt solicitation of perjury.

[48] *See* RCCA § 22A-4301, 4302.

justice and tampering with a witness or informant statutes no longer expressly prohibit "corruptly persuading" another person to commit the offense of perjury and instead relies on the solicitation of perjury offense, as well as other statutes, to establish liability for attempts to knowingly persuade another person to testify falsely. By covering any command, request, or attempt to persuade another person to commit perjury or perjury by false certification, the solicitation of perjury statue addresses corruptly persuading another person to testify falsely. Thus, any person who commits the offense of solicitation of perjury or attempted solicitation of perjury could be held liable under either the revised obstruction of justice statute or the revised tampering with a witness or informant statutes. This change improves the clarity and organization of the revised statutes.

*Beyond this one change to Current District law, three other aspects of the revised statute may constitute substantive changes to District law.*

First, the revised solicitation of perjury statute specifies a culpable mental state of "knowingly" for the actor's conduct in commanding, requesting, or trying to persuade another person to engage in conduct that would constitute perjury or perjury by certification. Current D.C. Code § 22-2403 requires that a person "wilfully procure[] another to commit perjury." Although the statute only uses the term "willfully," the legislative history indicates that the statute requires that "the person procuring the perjury must know or have reason to believe that the testimony given would be false."[49] Thus, current District law likely requires a knowing mental state with respect to the falsity of the other person's testimony and to acts that would procure such false testimony. In contrast, the revised solicitation statute clearly specifies a knowing mental state with respect to the actor's conduct and the conduct they are practically certain they will cause another to engage in, making false statements as proscribed by the perjury or perjury by false certification statute. This change improves the clarity and consistency of the revised statutes.

Second, the revised solicitation of perjury statute requires as an additional element that the actor act with the culpability required for the underlying offense of perjury or perjury by false certification. Current D.C. Code § 22-2403 requires that a person "wilfully procure[] another to commit perjury." The legislative history of the statute indicates that the statute requires that "the person procuring the perjury must know or have reason to believe that the testimony given would be false"[50] and knowledge that the testimony is false is the only apparent culpable mental state for the current perjury statute. The words "have reason to believe "could suggest that recklessness or negligence as to the falsity of the testimony suffices under current D.C. Code § 22-2403. If so, the current statute may impose a less stringent culpable mental state requirement as to the falsity of the testimony than that required under the current perjury offense. However, the phrase "reason to believe" appears only in legislative history and there is no DCCA case law adopting

[49] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 91 (July 20, 1982).
[50] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 91 (July 20, 1982).

specifying what the term "wilfully" means under § 22-2403 or adopting the reason to believe language. In contrast, the revised explicitly states that an actor must act with the culpability required for the offense of perjury or perjury by false certification. Given the culpable mental state required for those offenses and the lack of additional culpability specified, this element may change the culpable mental state required as to the falsity of the testimony. This change improves the consistency and clarity of District law.

Third, the revised solicitation of perjury statute specifies as prohibited conduct that the actor command, request, or try to persuade another person to engage in conduct that would constitute perjury or perjury by false certification. Current D.C. Code § 22-2403 specifies as prohibited conduct the act of "procuring" another person to commit the offense of perjury. The term "procuring" is not defined by statute. However, the legislative history states that "the term is intended to be broadly interpreted to include instigating, persuading, or inducing another by any means to commit perjury."[51] In contrast, the revised solicitation of perjury statute specifies that the actor must command, request, or try to persuade another person to engage in conduct that constitutes perjury or perjury by false solicitation. While both command and request are terms that require direct action, the phrase "tries to persuade" is meant to broadly encompass both direct and indirect attempts to persuade another person to commit perjury and includes attempts to persuade through coercion. [52] Combined, these terms give the statute a broad scope while still being clear as to what conduct is prohibited. This change improves the clarity and proportionality of District law.

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

The revised solicitation of perjury statute requires as an element that the government prove another person engaged in conduct that constitutes either the offense of perjury or perjury by false certification under District law. Current D.C. Code § 22-2403 punishes an actor who willfully procures another to commit perjury. District case law holds that the other person must actually commit the offense of perjury and legislative history supports the requirement that another person must actually commit the offense and that each element of the offense be proven.[53] The revised solicitation of perjury statute explicitly codifies this requirement. This change improves the clarity of the statute without substantively changing District law.

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[51] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 92 (July 20, 1982).

[52] *E.g.*, An actor threatens a witness with bodily harm knowing that the threat would persuade the witness to commit perjury. Even though the actor did not try to persuade the witness to commit perjury thorough argument, the actor's coercive threat of bodily harm would constitute an attempt to persuade the witness.

[53] *See Riley v. United States,* 647 A.2d 1165, 1171 (D.C. 1994) (noting that the subornation of perjury charge had not been established because there was no actual perjury); Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 91 (July 20, 1982).

**§ 22A-4206. False swearing.**

(a) *Offense.* An actor commits false swearing when the actor:
  (1) Knowingly makes a false statement in a writing to a notarial officer or other person while under oath or affirmation attesting to the truth of the statement; and
  (2) In fact:
    (A) The oath or affirmation was administered by a notarial officer or other person authorized to administer oaths; and
    (B) The statement is:
      (i) Material to the case or matter in which it was delivered; and
      (ii) Required by law to be sworn or affirmed before a notarial official or other person authorized to take and certify acknowledgment or proof.

(b) *Penalty.*
  (1) False swearing is a Class A misdemeanor.
  (2) Penalty enhancement. The penalty classification of this offense is increased one class when the actor commits the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person.

(c) *Definitions*. The terms "acknowledgment" and "notarial officer" have the same meanings specified in D.C. Code § 1-1231.01.

***Explanatory Note***. *The revised false swearing offense prohibits the making of false statements to a notarial official or other person in a document required by law to be sworn or affirmed. There are no penalty gradations but there is a penalty enhancement of one class for false statements that are material to the to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person. The revised false swearing offense replaces the false swearing statute in D.C. Code § 22-2404.*

Subsection (a) specifies the prohibited conduct for false swearing. Paragraph (a)(1) provides that an actor commits the offense of false swearing when the actor "knowingly makes a false statement in writing to a notarial officer or other person authorized to administer oaths while under oath of affirmation attesting to the truth of the statement." "Knowingly" is defined term in RCCA § 22A-206, which here requires that the actor be practically certain that the actor is making a false statement in writing to a person who the actor is practically certain is a notarial officer or other person authorized to administer oaths. Additionally, the "knowingly" mental state requires that the actor be practically certain that the actor is under oath or affirmation attesting to the truth of the statement. "Notarial officer" is a defined term in D.C. Code §1-1231.01 that includes any "notary public or other individual authorized to perform a notarial act." The paragraph also applies

to statements made to any person authorized to administer oaths regardless of whether the person qualifies as a "notarial officer" under D.C. Code §1-123.01.[54]

Paragraph (a)(2) specifies three circumstance elements that must exist when the actor makes a false statement in writing to a notarial officer or other person. Paragraph (a)(2) uses the phrase "in fact," a defined term in revised RCCA § 22A-207 that indicates there is no culpable mental state requirement for the subsequent elements.

Subparagraph (a)(2)(A) requires that the oath or affirmation taken by the actor have been administered by a notarial officer or other person authorized to take oaths. The phrase "in fact" in paragraph (a)(2) indicates there is no culpable mental state requirement for the requirement that the oath or affirmation be administered by a notarial officer or other person authorized to administer oaths.

Sub-subparagraph (a)(2)(B)(i) specifies that the false statement made by the actor must be material to the case or matter in which it was delivered. The requirement that the statement be delivered means it is insufficient for the government to establish that a false statement was made.[55] Rather, the government must prove that the statement was actually delivered to a case or matter. Per the rule of interpretation in RCCA § 22A-207, phrase "in fact" in paragraph (a)(2) applies to this element, and indicates there is no culpable mental state requirement as to whether the statement be material to the case or matter in which the statement is delivered.

Sub-subparagraph (a)(2)(B)(ii) specifies that the statement must be one that is required by law to be sworn or affirmed before a notarial official or other person authorized to take and certify acknowledgment[56] or proof. Per the rule of interpretation in RCCA § 22A-207, the phrase "in fact" in subparagraph (a)(2) applies to this element, and indicate that there is no culpable mental state requirement as to whether the statement be one required by law to be sworn or affirmed before a notarial official or other person authorized to take and certify acknowledgment or proof.

Subsection (b) specifies the penalty classification for false swearing. Paragraph (b)(2) provides enhanced penalties for false swearing in cases where the false statements affect the liberty interests of another person. If the government proves the actor committed the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person the penalty classification for false swearing may be increased in severity by one penalty class. "Negligent" is a defined term meaning in RCCA § 22A-206(d).[57] Applied here, it means

[54] If, for example, the DCCA interpreted D.C. Code § 1-1231.01 to define the term "notarial officer" only within that chapter, the false swearing statute would still cover false statements made to person authorized to perform take and certify acknowledgment or proof by other sections of District law.

[55] *E.g.*, If an actor makes a false statement to a notary public in an affidavit but never delivers the affidavit to any party that might rely on it in a case or matter, the actor would not be guilty of false swearing.

[56] "Acknowledgment" is a defined term that means a declaration by an individual that states the individual has signed a record for the purposes stated in the record, and if the record is executed in a representative capacity, that the person signed the record with proper authority and signed it as the act of the individual or entity identified in the record. D.C. Code § 1-1231.01.

[57] RCCA § 22A-206(d) ("A person acts negligently: (1) As to a result element, when: (A) The person should be aware of a substantial risk that the conduct will cause the result; and (B) The risk is of such a nature and

that an actor should have been aware of a substantial risk that their false statement would be material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person and that the risk was of such a nature and degree that, considering the nature of and motivation for the actor's statement and the circumstances the actor was aware of, failure to perceive the risk was a gross deviation from the standard of care a reasonable person in the actor's situation would follow.[58] [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (c) cross-references applicable definitions located elsewhere in District law.

***Relation to Current District Law.*** *The revised false swearing statute changes District law in one main way.*

The revised false swearing statute includes a penalty enhancement in cases where the false statements affect the liberty of another person. Current D.C. Code § 22-2404 treats all instances of false swearing the same regardless of whether the false statements are relied upon in a case or matter affecting the liberty interests of another person. Thus, even in cases where the false swearing is as effective as perjured testimony and detrimental to another person's most basic liberty interests, the current false swearing statute permits only a misdemeanor conviction.[59] To address this asymmetry, the revised statute includes a penalty enhancement of one class that raises penalty classification for false swearing from a misdemeanor to a felony one class below perjury in instances where the false statement is material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person. The inclusion of a penalty enhancement ensures that penalty for false swearing reflects the seriousness of the offense in cases where another person could be subjected to immediate and obvious irreparable harm. This change improves the consistency and proportionality of District law.

*Beyond this one change to Current District law, two other aspects of the revised statute may constitute substantive changes to District law.*

First, the revised false swearing statute specifies a culpable mental state of "knowingly" regarding the making of a false statement in writing to a notarial officer or

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degree that, considering the nature of and motivation for the person's conduct and the circumstances the person is aware of, the person's failure to perceive that risk is a gross deviation from the standard of care that a reasonable individual would follow in the person's situation.").

[58] *E.g.*, An actor who is an employee of the Department of Corrections submits an affidavit that falsely states a person released to a halfway house violated the standards of conduct for detention and requests that the person be remanded to the jail pursuant to D.C. Code § 23-1329(f)(2)-(5). In that case, it would be at least negligent for the actor to be unaware that their false statements would be material to continued release or detention of the person in the halfway house as the purpose of the affidavit is to support a request for remand to the jail.

[59] Although many instances of false swearing in cases affecting the liberty of another person may satisfy paragraph (a)(2) of the perjury statute, there may be instances where all of the elements are not met. *E.g.*, An actor submits an affidavit in support of a request that a judge remand a person released to a halfway house to the jail. The affidavit does not state the statements were made under penalty of perjury and therefore does not satisfy all of the requirements of the perjury statute. Nonetheless, the affidavit is accepted and relied upon by the judge in deciding whether to hold the person released to a halfway house in the jail instead.

other person while under oath or affirmation attesting to the truth of the statement. Current D.C. Code § 22-2404 requires that an actor "wilfully make[] a false statement, in writing"[60] Although the statute uses the term "willfully," the committee report indicates that "the term 'willfully' in this context is intended to mean knowingly and intentionally."[61] Additionally, the language of the perjury statute was previously been interpreted to have the same meaning as "knowingly and intentionally" and to require that an actor know or believe that the statement they are making is false.[62] Thus, current District law likely requires a knowing mental state *with respect to making a false statement in writing.* At the same time, it is not clear whether there is a culpable mental state requirement with regard to whether the actor was under oath or affirmation. The revised false swearing statute requires a knowingly mental state with respect to both the falsity of the statement and the requirement that the statement be under oath or affirmation. Applying a knowing culpable mental state requirement to statute elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.[63] Requiring that the actor be practically certain that they are making a false statement and that they are under oath or affirmation ensures that the actor is aware of the solemnity of circumstances and the need to tell the truth. This change improves the clarity and consistency of the revised statutes.

Second, the revised false swearing statute requires that the false statements be *delivered* in a case or matter to which they are material. Current D.C. Code § 22-2404 requires that the false statement be material. Further, under current case law, a statement is deemed material if it has "a natural tendency to influence, or was capable of influencing, the decision of a tribunal in making a determination required to be made."[64] Arguably, a false statement would need to be delivered before it had a tendency to influence or became capable of influence a decision.[65] Thus, the materiality requirement itself may presume

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[60] D.C. Code § 22-2404(a).

[61] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 93 (July 20, 1982).

[62] *See Maragon v. United States*, 187 F.2d 79, 80 (D.C. Cir. 1950) ("While, as we have said before, 'wilfully' in a criminal statute may have any one of a number of meanings, we think it is clear that in the perjury statute it means 'knowingly' or 'intentionally'.").

[63] *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)").

[64] *Weinstock v. United States*, 231 F.2d 699, 701-01 (D.C. Cir. 1956); *see also Robinson v. United States*, 114 F.2d 475, 476–77 (D.C. Cir. 1940) ("The ultimate test in either case is whether such statements had a natural tendency to influence the clerk in his investigation of the facts, in the exercise of his official discretion, and in the administration of the law."); Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 92 (July 20, 1982) ("It is intended that the materiality of the statement is to be determined by the general standards established in *Robinson v. United States*. Accordingly, the statement must be one which would have a natural tendency to influence a decision-maker.").

[65] *E.g.*, An actor is asked by a friend to provide an affidavit that will be used in a lawsuit involving the actor's friend. The actor wanting to help the friend drafts an affidavit containing untrue statements to aid the actor's friend. The actor takes it to a notary public and attests to the truth of the false statements in the affidavit. Before delivering the affidavit to his friend, however, the actor has a change of heart and rips up the false affidavit so that it is never delivered to the friend and used in the lawsuit. In that case, the affidavit could not

that the false statement be delivered. However, there does not appear to be any case law specifically addressing the question of whether the statements must be delivered. The revised resolves any ambiguity by explicitly requiring that the statements actually be delivered in a case or matter in which the statements are material. This change improves the clarity and proportionality of District law.

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

First, the revised false swearing offense uses the term "notarial officer" instead of notary public. Current D.C. Code § 22-2404 requires that the statement be one that is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths. In 2018, the District codified the Revised Uniform Law on Notarial Acts which includes definitions for the terms "notary public" and "notarial officer". Pursuant to the 2018 law, the term "notarial officer" includes notary publics.[66] The revised false swearing statute uses the terms "notarial officer" and "officer" to reach acts by notary publics and other persons authorized to take proof of certification under. The term "notarial officer" is defined in the text of the statute by cross reference to the applicable code provision. This change improves the clarity of the statute without changing District law.

Second, the revised false swearing statute explicitly states that any oath or affirmation be administered by a notarial officer or other person authorized to administer oaths. Current D.C. Code § 22-2404 specifies that a person must be "under oath or affirmation" and that the statement the person makes be "one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths." The statue does not, however, explicitly state that the oath must be administered by a notarial officer or other person authorized to administer oaths. Because an actor cannot be duly sworn by a person not authorized to take oaths, the current statute's requirement that the actor be under oath or affirmation necessarily presumes that an oath or affirmation was administered by a person authorized to administer oaths. The revised false swearing statute makes this explicit. This change improves the clarity of the statute without changing District law.

have influenced the lawsuit because it was never delivered to anyone. However, the facts attested to might have been material to the case had they been delivered.

[66] D.C. Code § 1-1231.01.

**§ 22A-4207. False statements.**

(a) *Offense.* An actor commits false statements when the actor:
  (1) Knowingly makes a false statement in writing, directly or indirectly, to any District of Columbia government agency, department, or instrumentality, including any court of the District of Columbia;
  (2) Negligent as to the fact that the writing indicates the making of a false statement is punishable by criminal penalty; and
  (3) In fact, the statement is:
    (A) Made under circumstances in which the statement could reasonably be expected to be relied upon as true; and
    (B) Material to the case or matter to which it was delivered or likely to be delivered.

(b) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(c) *Penalty.*
  (1) False statements is a Class B misdemeanor.
  (2) *Penalty enhancement*. The penalty classification of this offense is increased one class when the actor commits the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person.

***Explanatory Note****. The revised false statements offense prohibits the making of false statements to a District government agency, department, or instrumentality. There are no penalty gradations but there is a penalty enhancement of one class for false statements that are material to the to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person. The revised false statements offense replaces the false statements statute in D.C. Code § 22-2405*.

Subsection (a) specifies the prohibited conduct for false statements. Paragraph (a)(1) provides that an actor commits the offense of false statements when the actor "knowingly makes a false statement, directly or indirectly, to any District government agency, department, or instrumentality, including any court of the District of Columbia." "Knowingly" is defined term in RCCA § 22A-206, and applied here requires that the actor be practically certain that the statement the actor is making is false and that the statement is being made in writing, directly or indirectly, to a District government agency, department, or instrumentality.

Paragraph (a)(2) specifies that the writing must indicate that a false statement is subject to criminal penalty and that the actor must have a negligent culpable mental state with respect to that warning. The writing need not indicate a specific criminal penalty or statute as long as it specifies that the false statements are subject to criminal penalty.[67]

[67] *E.g.,* If a sworn affidavit indicates that the statement is made under penalty of perjury, the actor could be subject to liability under either the perjury statute or the false statements statute because the penalty for

Negligent is defined term in § 22A-206, which here requires that the actor should have been aware of a substantial risk that the writing indicates that false statements are subject to criminal punishment and that the risk is 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 failure to perceive the risk is a gross deviation from the standard of care that a reasonable individual would follow in the person situation.[68]

Paragraph (a)(3) specifies two circumstance elements that must exist when the actor makes a false statement, directly or indirectly, to a District government agency, department, or instrumentality. Paragraph (a)(3) uses the phrase "in fact," a defined term in revised § 22A-207 that indicates there is no culpable mental state requirement for the subsequent elements.

Subparagraph (a)(3)(A) specifies that the statement must be made under circumstances in which the statement could reasonably be expected to be relied up as true.[69] Reasonableness is an objective standard. The phrase "in fact" in subparagraph (a)(2) indicates there is no culpable mental state requirement for the requirement that the statement be made under circumstances in which the statement could reasonably be expected to be relied upon as true.

Subparagraph (a)(3)(B) specifies that the statement must be material to the case or matter to which it was delivered or likely to be delivered. The phrase "in fact" in subparagraph (a)(2) indicates there is no culpable mental state requirement for the requirement that the statement be material to the case or matter in which the statement is delivered or likely delivered. Subsection (b) specifies that prosecutions of false statements shall be conducted by the Office of the Attorney General for the District.

Subsection (b) specifies that prosecutions of false statements shall be conducted by the Office of the Attorney General for the District.

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perjury is a criminal penalty. Similarly, a statement that indicating that false statements are subject to this statute does not preclude prosecution under another statute addressing false statements. For example, *Gesrtein* affidavits submitted by members of the Metropolitan Police Department in support of probable cause are often signed with a statement indicating that "the statement was made under penalty and punishment for false statements pursuant to D.C. Code § 22-2405." However, *Gerstein* affidavits necessarily must be sworn before they can be proffered to the court and therefore fall within both the false swearing and false statements (and potentially perjury) statute irrespective of the indication that they are subject to the lesser penalty under the false statements statute. *See* D.C. Super. Ct. Crim. R. 5(e)(1).

[68] *E.g.*, An actor filing out a driver's license application would be expected to be aware of a substantial risk that the application contained a statement indicating that false statements were made under penalty of perjury. In contrast, an actor filling out a long opinion survey for the Department of Public Works would not be expected to be aware that the survey contained a statement indicating that false statements were subject to criminal penalty as opinion surveys are not of the nature where such formality is expected.

[69] *E.g.,* If an actor who is a resident of Vermont submitted an application to a government agency with a box checked stating that the actor was a resident of the District of Columbia and provided a District of Columbia address, the circumstances are such that a District agency might reasonably rely on the false statement indicating that the person was a District resident. If, however, the same actor submitted an application to a government agency with a box checked stating that the actor was a resident of the District of Columbia but provided their Vermont address and made no other suggestion that they were a District resident, the circumstances would not be such that it would be reasonable for an agency to rely on the statement that actor was a resident of the District rather than a resident of Vermont.

Subsection (c) specifies the penalty classification for false statements. Paragraph (c)(1) provides enhanced penalties for false statements in cases where the false statements affect the liberty of another person. If the government proves the actor committed the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person the penalty classification for false statements may be increased in severity by one penalty class. [70] "Negligent" is a defined term meaning in § 22A-206(d).[71] Applied here, it means that an actor should have been aware of a substantial risk that their false statement would be material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person and that the risk was of such a nature and degree that, considering the nature of and motivation for the actor's statement and the circumstances the actor was aware of, failure to perceive the risk was a gross deviation from the standard of care a reasonable person in the actor's situation would follow. [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

***Relation to Current District Law.*** *The revised false statements statute changes District law in one main way.*

The revised false statements statute includes a penalty enhancement in cases where the false statements affect the liberty of another person. Current D.C. Code § 22-2405 treats all instances of false statements the same regardless of whether the affidavit is likely to be relied upon to affect the liberty interests of another person. Thus, even in cases where the false statement is as effective as perjured testimony and detrimental another person's most basic liberty interests, the current false statements statute permits only a Class B conviction. [72] To partially address this asymmetry, the RCCA includes a penalty enhancement of one class that raises the penalty classification for false statements from a Class B to a Class A crime in instances where the false statement is material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person. The inclusion of a penalty enhancement is appropriate given the seriousness of the offense in

[70] *E.g.*, A police officer actor investigating a criminal complaint by private citizen drafts and signs a narrative report containing statements the officer knows to be false that would support an arrest warrant. The narrative report states that the statements are made subject to criminal penalty. The report is submitted to a detective who uses statements from the report in an application for an arrest warrant. In that case, the penalty enhancement would apply because the officer would clearly have known that the narrative report could be used by the detective in obtaining an arrest warrant and would thus be material to the arrest of another person.
[71] RCC § 22A-206(d) ("A person acts negligently: (1) As to a result element, when: (A) The person should be aware of a substantial risk that the conduct will cause the result; and (B) The risk is 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 failure to perceive that risk is a gross deviation from the standard of care that a reasonable individual would follow in the person's situation.").
[72] *E.g.*, An actor submits an unsworn proffer in support of a request that a judge remand a person released to a halfway house to the jail. The unsworn proffer does not state the statements were made under penalty of perjury and therefore does not satisfy all of the requirements of the perjury statute. Nonetheless, the unsworn proffer is accepted as the required affidavit in D.C. Code § 23-1329(f)(3) and relied upon by the judge in deciding whether to remand the person released to a halfway house.

cases where another person could be subjected to immediate and obvious irreparable harm.[73] This change improves the consistency and proportionality of District law.

*Beyond this one change to Current District law, four other aspects of the revised statute may constitute substantive changes to District law.*

First, the revised false statements statute specifies a culpable mental state of "knowingly" regarding the making of a false statement in writing to any District of Columbia government agency, department, or instrumentality. Current D.C. Code § 22-2405 requires that an actor "wilfully make[] a false statement, in writing that is in fact material, in writing, directly or indirectly to any instrumentality of the District of Columbia government." Although the statute uses the term "willfully," the committee report indicates that "the term 'willfully' in this context is intended to mean knowingly and intentionally."[74] Additionally, the language of the perjury statute has previously been interpreted to have the same meaning as "knowingly and intentionally" and to require that an actor know or believe that the statement they are making is false.[75] Thus, current District law requires a knowing mental state *with respect to making a false statement.* At the same time, it is not clear whether there is a culpable mental state requirement with regard to whether the statement is made to an instrumentality of the District of Columbia government. The revised false statements statute requires a knowingly mental state with respect to both the falsity of the statement and the requirement that the statement be made to an instrumentality of the District government. Applying a knowing culpable mental state requirement to statute elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.[76] Requiring that the actor be practically certain that they are making a false statement to an instrumentality of the government ensures that the actor is aware of the solemnity of circumstances and the need to tell the truth. This change improves the clarity and consistency of the revised statutes.

Second, the revised false statements statute does not make specific reference to declarations under §1-1061.13 or entity filings under Title 29. Current D.C. Code § 22-2405 specifies application to the signing of an entity filing or other document under Title 20 and to declarations under § 1-1-611.13 which deals with ballots by members of the military and overseas votes. D.C Code § 29-102.09 already provides that signing an entity

[73] A two-class penalty enhancement that increases the classification of the offense from a misdemeanor to a felony would also be appropriate. However, the prosecutorial authority for this offense rests with the Office of the Attorney General and there is no settled law on how a penalty enhancement that increases the maximum possible penalty beyond one year would affect prosecutorial authority under D.C. Code § 23-101. To avoid confusion and the complication of potential dual prosecutorial authority, the CCRC recommends only a one class enhancement where the penalty does not exceed one year for the revised false statements offense.

[74] Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 94 (July 20, 1982).

[75] *See Maragon v. United States*, 187 F.2d 79, 80 (D.C. Cir. 1950) ("While, as we have said before, 'wilfully' in a criminal statute may have any one of a number of meanings, we think it is clear that in the perjury statute it means 'knowingly' or 'intentionally'.").

[76] *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)").

filing constitutes an affirmation under the penalties for making false statements and entity filings for the Department of Consumer and Regulatory Affairs include a warning indicating that filings are subject to criminal penalty. Similarly, D.C. Code § 1-1061.13 already specifies that a military or overseas ballot must be accompanied by "a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of making a false statement under the laws of the District." Thus, the explicit mention of entity and other filings under Title 29 and overseas ballots under § 1-1061.13 is not necessary to encompass false statements in those contexts. Accordingly, the revised false statements statute relies on the general language and does not specifically enumerate these types of false statements. This change improves the clarity and organization of District law.

Third, the revised false statements statute requires that the false statements be *delivered or be likely to be delivered* in a case or matter to which they are material. Current D.C. Code § 22-2405 requires that the false statement be material. Pursuant to case law, a statement is deemed material if it has "a natural tendency to influence, or was capable of influencing, the decision of a tribunal in making a determination required to be made."[77] Arguably, a false statement would need to be delivered or likely to be delivered before it had a tendency to influence or became capable of influence a decision.[78] Thus, the materiality requirement itself may presume that the false statement be delivered or likely to be delivered. However, there does not appear to be any case law specifically addressing the question of whether the statements must be delivered or likely to be delivered. The RCCA resolves any ambiguity by explicitly requiring that the statements be actually delivered or likely to be delivered in a case or matter in which the statements are material. This change improves the clarity and proportionality of District law.

Fourth, the revised false statements statute specifies a "negligent" mental state with respect to whether the writing indicated that false statements were subject to penalty of perjury. Current D.C. Code § 22-2405 requires that the writing in which false statements are made indicate that the making of a false statement is punishable by criminal penalties. Further, the legislative history indicates that the writing should "clearly indicate" that criminal penalties attach for a false statement and place the person on notice that they are subject to liability. However, the statute does not specify that the actor was aware, or

[77] *Weinstock v. United States*, 231 F.2d 699, 701-01 (D.C. Cir. 1956); *see also Robinson v. United States*, 114 F.2d 475, 476–77 (D.C. Cir. 1940) ("The ultimate test in either case is whether such statements had a natural tendency to influence the clerk in his investigation of the facts, in the exercise of his official discretion, and in the administration of the law."); Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 92 (July 20, 1982) ("It is intended that the materiality of the statement is to be determined by the general standards established in *Robinson v. United States*. Accordingly, the statement must be one which would have a natural tendency to influence a decision-maker.").

[78] *E.g.*, An actor is asked by a friend to provide an affidavit that will be used in a lawsuit involving the actor's friend. The actor wanting to help the friend drafts an affidavit containing untrue statements to aid the actor's friend. The actor takes it to a notary when the actor attests to the truth of the false statements in the affidavit. Before delivering the affidavit to his friend, however, the actor has a change of heart and rips up the false affidavit so that it is never delivered to the friend and used in the lawsuit. In that case, the affidavit could not have influenced the lawsuit because it was never delivered to anyone. However, the facts attested to might have been material to the case had they been delivered.

should have been aware, the signed writing contain such a warning about criminal penalty and there is no case law addressing whether the required mental state for the written notice. Consequently, an actor could potentially be held liable based on a warning of criminal penalty in small print on one page of a voluminous document even if actor had no reason to think that the statement was being made subject to criminal penalty for false statements. In contrast, the revised false statements statute includes a negligent mental state with respect to the requirement that the writing notify the actor that the statement is made under threat of criminal penalty. The negligent mental state is appropriate as in most instances where an actor is submitting a statement in writing to an agency, department, or instrumentality that indicates the statement is made under penalty of perjury the circumstances will be such that it would be a gross deviation from the standard of care that a reasonable individual would follow in the person's situation. This change improves the consistency and proportionality of District law.

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

**§ 22A-4208. False reports.**

(a) *First degree.* An actor commits false reports in the first degree when the actor:
  (1) Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia;
  (2) With intent to implicate another person in the commission of a criminal offense; and
  (3) In fact, the information is given under circumstances in which the information could reasonably be expected to be relied upon as true.

(b) *Second degree*. An actor commits false reports in the second degree when the actor;
  (1) Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia;
  (2) With intent to cause the initiation of or affect the course of a Metropolitan Police Department investigation; and
  (3) In fact, the report or information is given under circumstances in which the report or information could reasonably be expected to be relied upon as true.

(c) *Defenses.* It is a defense to a prosecution under this section that the person, in fact, retracted the false report before the Metropolitan Police Department or any other person took substantial action in reliance on the report.

(d) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(e) *Penalties.*
  (1) *First degree*. First degree false reports is a Class C misdemeanor.
  (2) *Second degree*. Second degree false reports is a Class D misdemeanor.

***Explanatory Note****. The revised false reports offense prohibits the making of false reports to the Metropolitan Police Department in the District of Columbia. The offense has two penalty gradations based on the type of false report made. The revised false statements offense replaces the false or fictitious reports to Metropolitan police offense in D.C. Code § 5-117.05. The statute also provides that the offense shall be prosecuted by the Office of the Attorney General for the District of Columbia.*

Subsection (a) specifies the prohibited conduct for first degree false reports. Paragraph (a)(1) provides that an actor commits the offense of false reports when the actor "Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia." "Knowingly" is defined term in RCCA § 22A-206, which requires that the actor be practically certain that the statement the actor is giving or causing another person to give false information to a member of the Metropolitan Police Department.

Paragraph (a)(2) requires that the actor give or cause the false information to be given with intent to implicate another person in the commission of an offense. "Intent" is

a defined term in § 22A-206 that here means the actor was practically certain that the actor was implicating another person in the commission of a criminal offense. Per RCCA § 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. It is not necessary to prove that the actor actually implicated another person, only that the actor believed to a practical certainty that the false information would do so.

Paragraph (b)(3) requires the information, in fact, be given under circumstances in which the information could reasonably be expected to be relied upon as true. The phrase "in fact" is a defined term in RCCA § 22A-207 that indicates there is no culpable mental state requirement for the subsequent elements. Reasonableness is an objective standard.

Subsection (b) specifies the prohibited conduct for second degree false reports. Paragraph (b)(1) provides that an actor commits the offense of false reports when the actor "knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia." "Knowingly" is defined term in RCCA § 22A-206, which here requires that the actor be practically certain that they are giving, or causing another person to give, false information to a member of the Metropolitan Police Department.

Paragraph (b)(2) requires that the actor give or cause the false information to be given with intent to cause the initiation of or affect the course of a Metropolitan Police Department investigation. "Intent" is a defined term in RCCA § 22A-206 that here means the actor was practically certain that the actor would cause the initiation of or affect the course of a Metropolitan Police Department investigation. Per RCCA § 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. It is not necessary to prove that the actor actually caused the initiation of or affected the course of a Metropolitan Police Department investigation, only that the actor believed to a practical certainty that the false information would do so.

Paragraph (b)(3) requires the information, in fact, be given under circumstances in which the information could reasonably be expected to be relied upon as true.[79] The phrase "in fact" is a defined term in RCCA § 22A-207 that indicates there is no culpable mental state requirement for the subsequent elements. Reasonableness is an objective standard

Subsection (c) specifies that it is a defense to liability if the actor, in fact, retracted the false report before the Metropolitan Police Department or any other person took substantial action in reliance on the report.

Subsection (d) specifies that prosecutions of false reports shall be conducted by the Office of the Attorney General for the District.

Subsection (e) specifies the penalty classifications for false reports. Paragraph (e)(1) specifies the penalty classification for first degree false reports. Paragraph (e)(2)

[79] *E.g.*, If an actor provided a member of the Metropolitan Police Department with information alleging that the actor's neighbor is an alien from the planet Mars who abducted the actor and held the actor captive on a UFO for two days, the circumstances would not be such where the information could reasonably be expected to be relied upon as true even if the actor provided the information with intent to implicate his neighbor in the crime of kidnapping.

specifies the penalty classification for second degree false reports. [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

***Relation to Current District Law.*** *The revised false reports statute changes District law in three main ways.*

First, the revised false reports statute divides the offense into two grades depending on whether the conduct was intended to implicate another person in the commission of a criminal offense. Current D.C. Code § 5-117.05 consists of a single grade that does not distinguish the types of false reports made to the Metropolitan Police Department. In contrast, the revised false reports offense has two grades and punishes making false reports with the intent to implicate another person in the criminal offense as a more serious crime than making a general false report. This grading scheme recognizes that false reports implicating individuals inherently victimizes persons who may be placed under surveillance, questioned, searched, seized, or arrested on the basis of a false reports whereas more general reports leading to investigations are less likely to cause such individualized harms.[80] This change improves the proportionality of the revised statutes.

Second, the revised false reports statute provides a retraction defense. Current District law does not provide a retraction defense in the statute or in case law. Thus, once an actor makes a false report the actor cannot correct the false information without incriminating themselves in the commission of the offense. This creates an incentive to persist in the falsity rather than come clean with the truth. In contrast, the revised false reports statute contains a retraction defense that applies when a person retracts the false information provided before the Metropolitan Police Department or any other person took substantial action in reliance on the report.[81] The inclusion of this defense encourages actors to correct false information. To prevent abuse of the defense, the retraction defense is only available if the retraction occurs before the false information is relied upon for substantial action. This change encourages the discovery of the truth and improves the proportionality of District law.

Third, the revised false reports statute requires that the false information be given under circumstances in which the information could reasonably be expected be relied upon as true. Current D.C. Code § 5-117.05 does not require proof that the information be provided under circumstances in which the information could reasonably be expected to be relied upon as true. Consequently, a person could be held liable under the statute for providing information that is false irrespective of whether any member of the Metropolitan Police Department would have relied upon the information in the execution of their

[80] Certainly, there are some false reports that do not implicate other persons such as calling in bomb threats that are as, if not more, serious than implicating another person in a crime. The revised false alarms and false reports statute in Chapter 33 covers these types of false reports.

[81] *E.g.*, If the actor retracted the statement after a law enforcement officer obtained a warrant based on the information provided by the actor, the retraction defense would not apply. In contrast, if an actor being questioned by an officer provided false information and retracted the statement in the course of the conversation, the retraction defense would apply.

duties.[82] In contrast, the revised false reports statute specifies that the report or information must, in fact, be given under circumstances in which the report of information could reasonably be expected to be relied upon as true. This ensures that persons are not held liable for false statements that were never likely to cause harm or wasted resources because they would not reasonably be expected to be relied upon as true. This change improves the proportionality of District law.

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

The revised false reports statute specifies a culpable mental state of "knowingly" regarding giving or causing another to give false information to any member of the Metropolitan Police Department. Current D.C. Code § 5-117.05 punishes a person for making a false report, causing a false report to be made, communicating false information concerning the commission of a criminal offense, or causing such information to be communicated to a member of the Metropolitan Police Department. The statute specifies that the actor must know the information or report was false but does not specify a mental state with respect making or causing a report to be made or communicating or causing false information to be communicated. This is true even though the statute potentially punishes the actor for the decision of another person to make a false report or communicate the false information. Although the DCCA might read a knowing or reckless mental state into this statute based on the long-standing principle that "a defendant generally must 'know the facts that make his conduct fit the definition of the offense,'"[83] there is currently no case directly on point. In contrast, the revised false reports statute establishes a "knowingly" culpable mental state requiring both that the actor know the information is false and that the actor know they are giving or causing the information to be given to a member of the Metropolitan Police Department. Requiring that the actor be practically certain that they are giving or causing false information to be given to the police is appropriate given that the statute punishes the actor even in certain cases where the false information is furnished to law enforcement by another person. This change improves the clarity and proportionality of District law.

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

The revised false reporting statute specifies that the prosecutorial authority for the offense rests with the Office of the Attorney General. Current D.C. Code § 5-117.05 does not specify which prosecutorial authority is responsible for prosecuting false reports made to the Metropolitan Police Department. However, D.C. Code § 23-110 specifies that

[82] *E.g.*, An actor needing mental health services is being treated by paramedics. The actor shouts at nearby police officers that the paramedics are trying to kidnap the actor to obtain a ransom from the actor's father, Elvis Pressley. In this case, the actor made a report with the intent to implicate the paramedics in a crime. Nonetheless it would not be reasonable for the nearby police officers to rely on the false reports as true given the circumstances.

[83] *Elonis v. United States*, 575 U.S. 723, 735 (2015); *see also Carrell v. United States*, 165 A.3d 314, 321 (D.C. 2017).

prosecutions for all police or municipal ordinances or regulations and for violations of all penal statues in the nature of police or municipal regulations, where the maximum punishment is, a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Officer of Attorney General. Furthermore, in current practice, charges under this statue are brought in the name of the District by the Office of Attorney General.[84] The revised false reports statute explicitly provides prosecutorial authority to the Office of Attorney General. This change improves the clarity of the statute without changing District law.

[84] *See e.g., Cunningham v. D.C.*, 235 A.3d 749, 755 (D.C. 2020).

**§ 22A-4209. Impersonation of another before a tribunal, officer, or person.**

(a) *Offense.* An actor commits impersonation of another before a tribunal, officer, or person when the actor:
  (1) Knowingly provides personal identifying information belonging to another person to a competent tribunal, officer, or person;
  (2) With intent to deceive the tribunal, officer, or person as to the actor's identity; and
  (3) In fact, the personally identifying information was given under circumstances in which the information could reasonably be expected to be relied upon as true.

(b) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(c) *Penalties.* Impersonation of another before a tribunal, officer, or person is a Class C misdemeanor.

(d) *Definitions*.
  (1) The term "personal identifying information" has the meaning specified in D.C. Code § 22A-101 and the term "officer" has the meaning specified in D.C. Code § 1-301.45; and
  (2) In this section, the term;
    (A) "Competent" means having jurisdiction over the actor and case or matter; and
    (B) "Tribunal" means any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature.

***Explanatory Note***. *This section establishes the impersonation of another before a tribunal, officer, or person offense in the Revised Criminal Code Act (RCCA). The revised impersonation of another before a tribunal, officer, or person offense prohibits impersonating another person before a competent tribunal, officer, or person. There are no penalty gradations. The revised false impersonation of another before a tribunal, officer, or person offense replaces the false personation of another before court, officers, and notaries offense in D.C. Code § 22-1403.*

Subsection (a) specifies the prohibited conduct for impersonation of another before a tribunal, officer, or person. Paragraph (a)(1) provides that an actor commits the offense of impersonation of another before a tribunal, officer, or person when the actor "knowingly provides personal identifying information of another to a competent tribunal, officer, or person." "Knowingly" is defined term in RCCA § 22A-206, which here requires that the actor be practically certain that they are providing the personal identifying information of another to a competent tribunal, officer, or person. "Personal identifying information" is a defined term in RCCA § 22A-101.[85] "Competent" is a defined term in this section that

[85] "Personal identifying information" means: (A) Name, address, telephone number, date of birth, or mother's maiden name; (B) Driver's license or driver's license number, or non-driver's license or nondriver's license number; (C) Savings, checking, or other financial account number; (D) Social security number or tax

means having jurisdiction over the actor and case or matter.[86] "Officer" is a defined term in D.C. Code § 1-301.45.[87] The term "tribunal" is a defined term in subparagraph (d)(2)(B) and includes any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature.[88] To satisfy this element, the government must prove that the actor believed or was practically certain that they were giving personally identifying information of another to a competent tribunal, officer, or person had jurisdiction over both the actor and the case or matter.

Paragraph (a)(2) requires that the actor give the personal identifying information with intent to deceive the tribunal, officer, or person as to the actor's identity. "Intent" is a defined term in RCCA § 22A-206 that here means the actor was practically certain that the actor would deceive a tribunal, officer, or person as to the actor's identity. Per RCCA § 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 that the actor actually deceived a tribunal, officer, or person, only that the actor believed to a practical certainty that providing the personally identifying information of another would do so.

Paragraph (a)(3) requires the personal identifying information, in fact, be given under circumstances in which the information could reasonably be expected to be relied upon as true.[89] The phrase "in fact," a defined term in § 22A-207 that indicates there is no

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identification number; (E) Passport or passport number; (F) Citizenship status, visa, or alien registration card or number; (G) Birth certificate or a facsimile of a birth certificate; (H) Credit or debit card, or credit or debit card number; (I) Credit history or credit rating; (J) Signature; (K) Personal identification number, electronic identification number, password, access code or device, electronic address, electronic identification number, routing information or code, digital signature, or telecommunication identifying information; (L) Biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; (M) Place of employment, employment history, or employee identification number; and (N) Any other numbers or information that can be used to access a person's financial resources, access medical information, obtain identification, serve as identification, or obtain property. § 22A-101.

[86] *Compare* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) ("The term 'competent' is found in the current perjury statute and, as used in the provision, is intended to have the same meaning as in current law. Competency basically refers to jurisdiction. As under current law, it must be demonstrated that the tribunal, officer, or person had jurisdiction over the defendant and subject matter jurisdiction or authority to consider the issues before it. This requires a showing that the tribunal, officer, or person was properly convened.") (citing *Christoffel v. United States*, 338 U.S. 84 (1949)).

[87] The term "officer" in District law means "any person authorized by law to perform the duties of the office" and is not intended to refer specifically to police or law enforcement officers. *See* D.C. Code § 1-301.45. Members of the police force take a statutorily required oath of office and would ordinarily qualify as officers under this definition but would not necessarily have the requisite personal and subject matter jurisdiction to be "competent" under the statute.

[88] *Compare* Committee of the Judiciary, *Report on Bill 4-133*, "*Theft and White Collar Crimes Act of 1982,*" at 87 (July 20, 1982) ("[T]he term 'tribunal' means an officer or body having authority to adjudicate matters. Tribunals include, for example, trial courts, grand juries, and certain administrative bodies. As under current law, the provision is not limited to false testimony given before tribunals. The provision is intended to apply as well to false testimony given before other competent bodies and persons.").

[89] *E.g.*, If an actor in court is asked to state their name and date of birth for the record and the actor states that the actor's name is Abraham Lincoln and the actor was born on February 12, 1809, the circumstances would not be such where the information could reasonably be expected to be relied upon as true even if the actor

culpable mental state requirement for the subsequent elements. Reasonableness is an objective standard.

Subsection (b) specifies that prosecutions of impersonation of another before a tribunal, officer, or person shall be conducted by the Office of the Attorney General for the District.

Subsection (c) specifies the penalty classification for impersonation of another before a tribunal, officer, or person. [*See* RCCA §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (d) provides definitions for the terms "competent" and "tribunal" and cross-references applicable definitions located elsewhere in the code.

***Relation to Current District Law.*** *The revised impersonation of another before a tribunal, officer, or person statute changes District law in three main ways.*

First, the revised impersonation of another before a tribunal, officer, or person statute requires the actor to knowingly engage in specified conduct designed to impersonate another person before a competent tribunal, officer, or person. Current D.C. Code § 22-1403 punishes a person for falsely personating another person but does not specify what conduct constitutes falsely personating another. In contrast, the revised impersonation of another before a tribunal, officer, or person statute specifies that the conduct that establishes the act of impersonating is knowingly providing "personal identifying information" of another to a competent tribunal, officer, or person. Because the definition of "personal identifying information"[90] is broad and comprehensive, this phrasing covers all manners of impersonating another person before a tribunal, officer, or person while giving clear guidance as to the conduct necessary to establish the offense. This change improves the clarity and consistency of District law.

Second, the revised impersonation of another before a tribunal, officer, or person statute requires that the personal identifying information of another be given under circumstances in which the information could reasonably be expected be relied upon as true. Current D.C. Code § 22-1403 does not require proof that the personal identifying information be provided under circumstances in which the information could reasonably be expected to be relied upon as true. Consequently, a person could be held liable under this statute for providing personal identifying information of another irrespective of whether a reasonable person might have relied upon the information.[91] In contrast and consistent with the purpose of the statute, the impersonation of another before a tribunal, officer, or person statute specifies that the report or information must, in fact, be given under circumstances in which the report of information could reasonably be expected to be

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provided the personal identifying information of Abraham Lincoln with intent to deceive the court as to his identity.

[90] See § 22A-101.

[91] *E.g.*, An actor is arrested and brought before the court for an initial person. The court asks the actor to state their name and the actor states their name is Barack Obama and that they are the President of the United States. Even if the actor intended to deceive the court as to the actor's identify, the circumstances would not be such that a reasonable person would rely on the actor's statement that they were Barack Obama and the actor would not be liable for impersonation of another before a tribunal, officer, or person.

relied upon as true. This ensures that persons are not held liable for providing the personal identifying information of another under circumstances where there was little risk of someone relying on the false information. This change improves the consistency and proportionality of District law.

Third, the revised impersonation of another before a tribunal, officer, or person offense applies to actors impersonating another before a competent tribunals, officers or person. Current D.C. Code § 22-1403 apples when an actor falsely personates another before "any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses or accepts domestic partnership registrations." In contrast, the revised impersonation of another before court of officer statue requires that the actor impersonate another before tribunal, officer, or person with jurisdiction over the actor and case or matter. Consequently, the revised impersonation of another before a tribunal, officer, or person statute does not expressly apply to officials with authority to take acknowledgement of deeds or other instruments or officials with authority to grant marriage license or accept domestic partnership registrations as does the current law. Liability for such conduct under this statute is not necessary, however, as providing the personal identifying information of another to such officials with intent to deceive as to one's identity would necessarily fall within the revised false swearing and/or false statements statutes. This change improves the clarity, consistency, organization and proportionality of District law.

Fourth, the revised impersonation of another before a tribunal, officer, or person statute addresses some conduct covered under the current identity theft statute in D.C. Code § 22-3227.02(3) but not specifically addressed in the revised identity theft statute § 22A-3305. The current identity theft statute includes using identifying information to avoid detection, apprehension or prosecution for a crime and punishes such conduct "when another person is falsely accused of, or arrested for, committing a crime because of the use, without permission, of that person's personal identifying information."[92] The revised identity theft statute did not include this conduct because most such conduct is covered by other offenses such as false statements and false reports.[93] In contrast with current District law's punishment of such conduct as identity theft, the revised impersonation of another before a tribunal, officer, or person statute specifically addresses the use of personal identifying information of another before a tribunal, officer, or person covers misuse of another's identity to avoid detection, apprehension or prosecution for a crime.[94] This change eliminates unnecessary overlap, and improves the proportionality of the revised statute.

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[92] *See* D.C. Code § 22-3227.03(b). While the current identity theft statute purports to criminalize use of another's personal identifying information without consent to identify himself at arrest, conceal a crime, etc., current D.C. Code § 22-3227.03(b) only provides a penalty for such conduct in the limited circumstance where it results in a false accusation or arrest of another person.

[93] *See* Commentary to RCCA § 22A-3305.

[94] Other statutes cover the use of another person's personal identifying information indirectly. *E.g*., the false swearing, false statements, and false reports statutes all would cover falsely using the personal identifying information of another in certain circumstances.

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

First, the revised impersonation of another before a tribunal, officer, or person statute uses the RCCA definition of "intent." Current D.C. Code § 22-1403 punishes a person for falsely impersonating another person with intent to defraud. The statute specifies that the actor must have an intent to defraud. The term "intent" as used in the current statute is not defined, and there is no relevant DCCA case law. In contrast, the revised impersonation of another before a tribunal, officer, or person statute specifies that a person must act "with intent" to deceive the tribunal, officer, or person as to the actor's identity. In the RCCA, "intent" is a defined term under § 22A-206 that here means an actor must be practically certain that their conduct will deceive a tribunal, officer, or person as to their identity. This change improves the clarity and consistency of District law.

Second, the revised impersonation of another before a tribunal, officer, or person statute specifies a culpable mental state of "knowingly" regarding providing personal identifying information of another to a competent tribunal, officer, or person. Current D.C. Code § 22-1403 specifies that a person commits the offense when they "falsely personate" another "with intent to defraud" but does not otherwise specify a mental state. Although the DCCA might read a knowing or reckless mental state into this statute based on both the statutory requirement that that a person falsely personate with intent to defraud as well as the long-standing principle that "a defendant generally must 'know the facts that make his conduct fit the definition of the offense,'"[95] there is currently no case directly on point. In contrast, the revised impersonation of another before a tribunal, officer, or person statute specifies that the actor must know they are providing personal identifying information of another to a competent tribunal, officer, or person. Requiring that the actor be practically certain they are giving the personal identifying information of another to a competent tribunal, officer, or person is appropriate to ensure the actor knows the facts that make the actor's conduct an offense. This change improves the clarity and proportionality of District law.

Third, the revised false impersonation of another before a tribunal, officer, or person offense resides with the Office of the Attorney General. Current D.C. Code § 22-1403 does not specify which prosecutorial authority is responsible for prosecuting false impersonation of another before a tribunal, officer, or person. However, D.C. Code § 23-110 specifies that prosecutions for all police or municipal ordinances or regulations and for violations of all penal statues in the nature of police or municipal regulations where the maximum punishment is, a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Officer of Attorney General. The revised impersonation of another before a tribunal, officer, or person penalizes providing the personal identifying information of another to instrumentalities of the District government with intent to deceive as to the actor's identity. Thus, the offense, similar to false statements, is in the nature of a police or municipal regulation and the Office of the

[95] *Elonis v. United States*, 575 U.S. 723, 735 (2015); *see also Carrell v. United States*, 165 A.3d 314, 321 (D.C. 2017).

Attorney General is the appropriate prosecutorial authority. This change improves the clarity of the statute without changing District law.

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

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

### § 22A-4203. Perjury.

(f) *Offense.* An actor commits perjury when the actor either:
  (1) Knowingly makes a false statement in an official proceeding; and
    (A) In fact:
      (i) The actor makes the false statement while testifying, orally or in writing, under oath or affirmation attesting to the truth of the statement;
      (ii) The oath or affirmation is administered:
        (I) Before a competent tribunal, officer, or person;
        (II) In a case or matter in which the law authorizes the taking of such an oath or affirmation; and
      (iii) The false statement is material to the course or outcome of the official proceeding; or
  (2) Knowingly makes a false statement in a sworn declaration or unsworn declaration; and
    (A) In fact, the statement is:
      (i) In a writing with a statement indicating that the declaration is made under penalty of perjury;
      (ii) Delivered in a case or matter where the law requires or permits the statement be made in a sworn declaration; and
      (iii) Material to the case or matter in which the declaration is delivered.

(g) *Requirement of Corroboration*. In a prosecution under this section, proof of falsity of a statement may not be established solely by the uncorroborated testimony of a single witness.

(h) *Defenses.* It is a defense to liability under section (a)(1) that, in fact:
  (1) The actor retracted the false statement during the course of the official proceeding;
  (2) The retraction occurred before the falsity of the statement is exposed; and
  (3) The retraction occurred before the false statement substantially affects the proceeding.

(i) *Penalty.* Perjury is a Class 8 felony.

(j) *Definitions*. In this section, the term:
  (1) "Competent" means having jurisdiction over the actor and case or matter;
  (2) "Tribunal" means any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature;
  (3) "Official proceeding" has the meaning specified in § 22A-101;
  (4) "Officer" has the meaning specified in D.C. Code § 1-301.45.

(5) "Sworn declaration" means a signed record given under oath or affirmation attesting to its truth including a sworn statement, verification, certificate, or affidavit.
(6) "Unsworn declaration" means a declaration in a signed record that is not given under oath but is given under penalty of perjury as specified in D.C. Code § 16-5306 or 28 U.S.C. §1746(2).

**§ 22A-4204. Perjury by false certification.**

(d) *Offense.* An actor commits perjury by false certification when the actor:
(1) Knowingly makes a false certification of acknowledgement or of another material matter in an acknowledgment; and
(2) In fact, the actor is a notarial official or other officer authorized to take proof or certification.
(e) *Penalty.* Perjury by false certification is a Class 8 felony.
(f) *Definitions.* The terms "acknowledgement" and "notarial officer" have the same meanings specified in D.C. Code § 1-1231.01 and the term "officer" has the meaning specified in D.C. Code § 1-301.45.

**§ 22A-4205. Solicitation of perjury.**

(c) *Offense.* An actor commits solicitation of perjury when the actor:
(1) Knowingly commands, requests, or tries to persuade another person to engage in conduct, which, if carried out, in fact, will constitute either the offense of perjury or the offense of perjury by false certification under District of Columbia law;
(2) Acts with the culpability required for the offense of perjury or the offense of perjury by false certification; and
(3) In fact, the other person engages in conduct which constitutes either the offense of perjury or the offense of perjury by false certification under District of Columbia law.
(d) *Penalty.* Solicitation of perjury is a Class 8 felony.

**§ 22A-4206. False swearing.**

(d) *Offense.* An actor commits false swearing when the actor:
(1) Knowingly makes a false statement in a writing to a notarial officer or other person while under oath or affirmation attesting to the truth of the statement; and
(2) In fact:
(A) The oath or affirmation was administered by a notarial officer or other person authorized to administer oaths; and
(B) The statement is:
(i) Material to the case or matter in which it was delivered; and

(ii) Required by law to be sworn or affirmed before a notarial official or other person authorized to take and certify acknowledgment or proof.

(e) *Penalty.*

(1) False swearing is a Class A misdemeanor.

(2) Penalty enhancement. The penalty classification of this offense is increased one class when the actor commits the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person.

(f) *Definitions*. The terms "acknowledgment" and "notarial officer" have the same meanings specified in D.C. Code § 1-1231.01.

**§ 22A-4207. False statements.**

(d) *Offense.* An actor commits false statements when the actor:

(1) Knowingly makes a false statement in writing, directly or indirectly, to any District of Columbia government agency, department, or instrumentality, including any court of the District of Columbia;

(2) Negligent as to the fact that the writing indicates the making of a false statement is punishable by criminal penalty; and

(3) In fact, the statement is:

(A) Made under circumstances in which the statement could reasonably be expected to be relied upon as true; and

(B) Material to the case or matter to which it was delivered or likely to be delivered.

(e) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(f) *Penalty.*

(1) False statements is a Class B misdemeanor.

(2) *Penalty enhancement*. The penalty classification of this offense is increased one class when the actor commits the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person.

**§ 22A-4208. False reports.**

(f) *First degree.* An actor commits false reports in the first degree when the actor:

(1) Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia;

(2) With intent to implicate another person in the commission of a criminal offense; and

(3) In fact, the information is given under circumstances in which the information could reasonably be expected to be relied upon as true.

(g) *Second degree*. An actor commits false reports in the second degree when the actor;

(1) Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia;

(2) With intent to cause the initiation of or affect the course of a Metropolitan Police Department investigation; and

(3) In fact, the report or information is given under circumstances in which the report or information could reasonably be expected to be relied upon as true.

(h) *Defenses.* It is a defense to a prosecution under this section that the person, in fact, retracted the false report before the Metropolitan Police Department or any other person took substantial action in reliance on the report.

(i) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(j) *Penalties.*

(1) *First degree*. First degree false reports is a Class C misdemeanor.

(2) *Second degree*. Second degree false reports is a Class D misdemeanor.

**§ 22A-4209. Impersonation of another before a tribunal, officer, or person.**

(e) *Offense.* An actor commits impersonation of another before a tribunal, officer, or person when the actor:

(1) Knowingly provides personal identifying information belonging to another person to a competent tribunal, officer, or person;

(2) With intent to deceive the tribunal, officer, or person as to the actor's identity; and

(3) In fact, the personally identifying information was given under circumstances in which the information could reasonably be expected to be relied upon as true.

(f) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(g) *Penalties.* Impersonation of another before a tribunal, officer, or person is a Class C misdemeanor.

(h) *Definitions*.

(1) The term "personal identifying information" has the meaning specified in D.C. Code § 22A-101 and the term "officer" has the meaning specified in D.C. Code § 1-301.45; and

(2) In this section, the term;

(A) "Competent" means having jurisdiction over the actor and case or matter; and

(B) "Tribunal" means any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature.

**Appendix B – Redlined Text**
**Comparing Draft Revised Statutes with Current D.C. Code Statutes**

**§ 22A-4203. Perjury.**

(a) *Offense.* An actor ~~a person~~ commits ~~the offense of~~ perjury when the actor either ~~if~~:

(1) Knowingly makes a false statement in an official proceeding ~~wilfully and contrary to an oath or affirmation states or subscribes any material matter which he or she does not believe to be true and which in fact is not true~~; and

(A) In fact:

(i) The actor makes the false statement while testifying, orally or in writing, ~~having taken an~~ under oath or affirmation attesting to the truth of the statement ~~that he or she will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by that person subscribed is true or that any written testimony, declaration, deposition, or certificate by that person subscribed is true~~;

(ii) The oath or affirmation is administered:

(I) Before a competent tribunal, officer, or person;

(II) In a case or matter in which the law authorizes the taking of such an oath or affirmation ~~to be administered~~; and

(iii) The false statement is material to the course or outcome of the official proceeding; or

(2) Knowingly makes a false statement ~~willfully states or subscribes as true any material matter that the person does not believe to be true and that in fact is not true~~ in a sworn declaration or unsworn declaration ~~in any declaration, certificate, verification, or statement made under penalty of perjury in the form specified in § 16-5306 or 28 U.S.C. § 1746(2)~~; and

(A) In fact, the statement is:

(i) In a writing with a statement indicating that the declaration is made under penalty of perjury;

(ii) Delivered in a case or matter where the law requires or permits the statement be made in a sworn declaration; and

(iii) Material to the case or matter in which the declaration is delivered.

(b) *Requirement of Corroboration*. In a prosecution under this section, proof of falsity of a statement may not be established solely by the uncorroborated testimony of a single witness.

(c) *Defenses.* It is a defense to liability under section (a)(1) that, in fact:

(1) The actor retracted the false statement during the course of the official proceeding;

(2) The retraction occurred before the falsity of the statement is exposed; and

(3) The retraction occurred before the false statement substantially affects the proceeding.

(d) *Penalty.* Perjury is a Class 8 felony.

(e) *Definitions*. In this section, the term:

(1) "Competent" means having jurisdiction over the actor and case or matter;

(2) "Tribunal" means any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature;

(3) "Official proceeding" has the meaning specified in § 22A-101;

(4) "Officer" has the meaning specified in D.C. Code § 1-301.45.

(5) "Sworn declaration" means a signed record given under oath or affirmation attesting to its truth including a sworn statement, verification, certificate, or affidavit.

(6) "Unsworn declaration" means a declaration in a signed record that is not given under oath but is given under penalty of perjury as specified in D.C. Code § 16-5306 or 28 U.S.C. §1746(2).

~~(2) As a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully certifies falsely as to another material matter in an acknowledgement; or~~

~~(b) Any person convicted of perjury shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.~~

**§ 22A-4204. Perjury by false certification.**

(a) *Offense.* An actor ~~a person~~ commits ~~the offense of~~ perjury by false certification when the actor ~~if~~:

(1) Knowingly makes a false certification of acknowledgement ~~wilfully certifies falsely that an instrument was acknowledged~~ or ~~wilfully certifies falsely as to~~ of another material matter in an acknowledgment; and

(2) In fact, the actor is a notarial official or other officer ~~as a notary public or other officer~~ authorized to take proof or certification.

(b) *Penalty.* Perjury by false certification is a Class 8 felony.

(c) *Definitions.* The terms "acknowledgement" and "notarial officer" have the same meanings specified in D.C. Code § 1-1231.01 and the term "officer" has the meaning specified in D.C. Code § 1-301.45.

**§ 22A-4205. Solicitation of perjury.**

(a) *Offense.* An actor ~~a person~~ commits solicitation ~~the offense of subornation~~ of perjury when the actor ~~if~~:

(1) Knowingly ~~wilfilly~~ commands, requests, or tries to persuade ~~procures~~ another person to engage in conduct, which, if carried out, in fact, will constitute either the offense of perjury or the offense of perjury by false certification under District of Columbia law ~~commit perjury~~;
(2) Acts with the culpability required for the offense of perjury or the offense of perjury by false certification; and
(3) In fact, the other person engages in conduct which constitutes either the offense of perjury or the offense of perjury by false certification under District of Columbia law.

(b) *Penalty.* Solicitation of perjury is a Class 8 felony.

~~A person commits the offense of subornation of perjury if that person wilfully procures another to commit perjury. Any person convicted of subornation of perjury shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.~~

**§ 22A-4206. False swearing.**

(a) *Offense.* An actor ~~a person~~ commits ~~the offense of~~ false swearing when the actor ~~if~~:
(1) Knowingly ~~wilfully~~ makes a false statement in a writing to a notarial officer or other person while under oath or affirmation attesting to the truth of the statement; and
(2) ~~That is~~ In fact:
(A) The oath or affirmation was administered by a notarial officer or other person authorized to administer oaths; and
(B) The statement is:
(i) Material to the case or matter in which it was delivered; and
(ii) Required by law to be sworn or affirmed before a notarial official ~~public~~ or other person authorized to take and certify acknowledgment or proof ~~administer oaths~~.

(b) *Penalty.*
(1) False swearing is a Class A misdemeanor.
(2) Penalty enhancement. The penalty classification of this offense is increased one class when the actor commits the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person.

(c) *Definitions*. The terms "acknowledgment" and "notarial officer" have the same meanings specified in D.C. Code § 1-1231.01.

~~(b) Any person convicted of false swearing shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both.~~

**§ 22A-4207. False statements.**

(a) *Offense.* An actor ~~a person~~ commits ~~the offense of~~ false statements when the actor ~~if~~:

(1) Knowingly ~~wilfully~~ makes a false statement ~~that is in fact material~~ in writing, directly or indirectly, to any District of Columbia government agency, department, or instrumentality ~~instrumentality of the District of Columbia government~~, including any court of the District of Columbia;

(2) Negligent as to the fact that ~~provided that~~ the writing indicates the making of a false statement is punishable by criminal penalty~~ies or if that person makes an affirmation by signing an entity filing or other document under Title 29 of the District of Columbia Official Code, knowing that the facts stated in the filing are not true in any material respect or if that person makes an affirmation by signing a declaration under § 1-1061.13, knowing that the facts stated in the filing are not true in any material respect~~; and

(3) In fact, the statement is:

(A) Made under circumstances in which the statement could reasonably be expected to be relied upon as true; and

(B) Material to the case or matter to which it was delivered or likely to be delivered.

(b) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(c) *Penalty.*

(1) False statements is a Class B misdemeanor.

(2) *Penalty enhancement*. The penalty classification of this offense is increased one class when the actor commits the offense negligent as to the fact that the statement was material to the arrest, detention, prosecution, conviction, punishment, search, or seizure of another person.

~~(b) Any person convicted of making false statements shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both. A violation of this section shall be prosecuted by the Attorney General for the District of Columbia or one of the Attorney General's assistants.~~

**§ 22A-4208. False reports.**

(k) *First degree.* An actor commits false reports in the first degree when the actor:

(1) Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia;

(2) With intent to implicate another person in the commission of a criminal offense; and

(3) In fact, the information is given under circumstances in which the information could reasonably be expected to be relied upon as true.

(l) *Second degree*. An actor commits false reports in the second degree when the actor;

(1) Knowingly gives or causes another person to give false information to any member of the Metropolitan Police Department of the District of Columbia;

(2) With intent to cause the initiation of or affect the course of a Metropolitan Police Department investigation; and

(3) In fact, the report or information is given under circumstances in which the report or information could reasonably be expected to be relied upon as true.

(m) *Defenses.* It is a defense to a prosecution under this section that the person, in fact, retracted the false report before the Metropolitan Police Department or any other person took substantial action in reliance on the report.

(n) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(o) *Penalties.*

(1) *First degree*. First degree false reports is a Class C misdemeanor.

(2) *Second degree*. Second degree false reports is a Class D misdemeanor.

~~Except as provided in § 22-1319, whoever shall make or cause to be made to the Metropolitan Police force of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such report to be false or fictitious; or who shall communicate or cause to be communicated to such Metropolitan Police force, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such information to be false, shall be punished by a fine of not exceeding $300 or by imprisonment not exceeding 30 days.~~

**§ 22A-4209. Impersonation of another before a tribunal, officer, or person.**

(i) *Offense.* An actor commits impersonation of another before a tribunal, officer, or person when the actor:

(1) Knowingly provides personal identifying information belonging to another person to a competent tribunal, officer, or person;

(2) With intent to deceive the tribunal, officer, or person as to the actor's identity; and

(3) In fact, the personally identifying information was given under circumstances in which the information could reasonably be expected to be relied upon as true.

(j) *Prosecutorial authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

(k) *Penalties.* Impersonation of another before a tribunal, officer, or person is a Class C misdemeanor.

(l) *Definitions*.

(1) The term "personal identifying information" has the meaning specified in D.C. Code § 22A-101 and the term "officer" has the meaning specified in D.C. Code § 1-301.45; and

(2) In this section, the term;

(A) "Competent" means having jurisdiction over the actor and case or matter; and

(B) "Tribunal" means any District of Columbia court, regulatory agency, commission, or other body or person authorized by law to render a decision of a judicial or quasi-judicial nature.

~~(a) Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses or accepts domestic partnership registrations, with intent to defraud, shall be imprisoned for not less than 1 year nor more than 5 years.~~

~~(a-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.~~

~~(b) For the purposes of this section, the term "domestic partnership" shall have the same meaning as provided in § 32-701(4).~~