Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes (Voting Draft)

SUBMITTED FOR ADVISORY GROUP REVIEW
March 3, 2017

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at www.ccrc.dc.gov.

This Voting Draft contains the D.C. Criminal Code Reform Commission's proposed final recommendations to the Council and Mayor on certain criminal code reform topics. This draft is based on the Advisory Group's timely written comments on two prior drafts. Changes from the Second Draft of the Report and Appendices are redlined in this Voting Draft. This Voting Draft will be the subject of a vote by the Advisory Group's voting members at its next meeting, currently scheduled for April 5, 2017.

Approval by a majority of the Advisory Group's voting members is necessary before these draft final recommendations may be submitted to the Council and Mayor.

~~Any Advisory Group member may submit written comments on any aspect of this Draft Report to the D.C. Criminal Code Reform Commission. The Commission will consider all written comments that are timely received from Advisory Group members. Additional versions of this Draft Report may be issued for Advisory Group review, depending on the nature and extent of the Advisory Group's written comments. The D.C. Criminal Code Reform Commission's final recommendations to the Council and Mayor for comprehensive criminal code reform will be based on the Advisory Group's timely written comments and approved by a majority of the Advisory Group's voting members.~~

~~The deadline for Advisory Group written comments on this Second Draft of Report No. 1, *Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes*, including its separately attached Appendices, is February 27, 2017 (just over four weeks from the date of issue). Oral comments, and written comments received after February 27, 2017, will not be reflected in the Third Draft of Report No. 2, which may be voted upon by the Advisory Group. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.~~

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[TWO SEPARATE ATTACHMENTS: APPENDICES I-VIII; APPENDIX IX]

INTRODUCTION

This Report and the accompanying Appendices consolidate and update prior recommendations and draft bills concerning the District's criminal statutes that were developed by the D.C. Sentencing Commission (Sentencing Commission). In September 2015, the Sentencing Commission unanimously approved and submitted to the Council and Mayor recommendations and several corresponding draft bills that would amend various criminal statutes and enable the adoption of Title 22 as an enacted title of the D.C. Code. The Council did not subsequently take action on the draft recommendations or draft legislation.

The D.C. Criminal Code Reform Commission (Criminal Code Reform Commission), pursuant to its new mandate,[1] has reviewed, updated, and consolidated the Sentencing Commission's September 2015 recommendations and corresponding draft bills in this Report. This Report's recommendations and draft legislation differ slightly, but significantly, from those the Sentencing Commission submitted in September 2015. The chief differences are: 1) this Report resolves certain ambiguities in the current text of Title 22 that were noted but left to legislative resolution in the Sentencing Commission's recommendations; 2) this Report addresses the few criminal laws that have been passed since September 2015; 3) this Report makes fewer technical amendments to non-Title 22 criminal statutes and some statutes referencing federal property; and 4) The portion of the draft legislation that enacts Title 22 directly amends the text to reflect the recommended revisions for that title. These minor changes have allowed the Criminal Code Reform Commission to combine the recommendations into one updated bill.

[1] The Criminal Code Reform Commission Act of 2016, part of the Council's Fiscal Year 2017 Budget Support Act of 2016, established the Criminal Code Reform Commission and transferred staff and responsibility for developing recommendations to reform the criminal code from the Sentencing Commission. The Criminal Code Reform Commission's mandate is as follows:

> (a) By October l, 2018, the Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to:
>
> (1) Use clear and plain language;
> (2) Apply consistent, clearly articulated definitions;
> (3) Describe all elements, including mental states, that must be proven;
> (4) Reduce unnecessary overlap and gaps between criminal offenses;
> (5) Eliminate archaic and unused offenses;
> (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties;
> (7) Organize existing criminal statutes in a logical order;
> (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
> (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment;
> (10) Propose such other amendments as the Commission believes are necessary; and
> (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

This Report's recommendations are presented in six parts: I. Archaic and unused offenses and provisions to repeal; II. Technical amendments to correct outdated language; III. Unconstitutional statutes to amend; IV. Common law offenses to repeal; V. Relocation of Title 22 provisions to other D.C. Code titles; and VI. Enactment of Title 22.

Appendices to this Report provide additional detail on the Criminal Code Reform Commission's recommendations, and include relevant statistics (Appendix VII), comments from the agency's Advisory Group (Appendix VIII), and a draft bill that would pass the recommended revisions into law (Appendix IX). The bill in Appendix IX contains multiple sections, some making changes to titles other than Title 22, and one section that both enacts and makes certain changes to Title 22. Although the bill is lengthy and contains a copy of Title 22 offenses for purposes of enactment, the bill is designed to not change any laws other than those specified in this Report.

Adoption of the Criminal Code Reform Commission's recommendations in this Report and passage of the bill in Appendix IX would significantly improve the District's criminal statutes, particularly Title 22 of the D.C. Code, which includes most crimes that are not concerned with regulation of an industry. Several archaic and unused offenses, such as "Playing Games in Streets,"[2] would be repealed, and outdated references, such as to the "Workhouse of the District of Columbia," would be updated. Language in current statutes that has been ruled unconstitutional by District courts would be amended and the specter of common law crimes, whose authority is old judicial opinions, rather than legislation, would be definitively ended. Title 22 of the D.C. Code, the title originally designed to contain only criminal offenses, would be reorganized such that non-criminal and procedural matters are removed to other titles. And Title 22 would be "enacted" as law of its own, easing the administrative burden of future amendments to Title 22.

[TEXT TO BE ADDED AFTER FINAL ADVISORY GROUP ~~CRAG REVIEW~~ VOTE: The Criminal Code Revision Advisory Group (Advisory Group~~CRAG~~), a statutorily-designated group comprised of five voting and two non-voting members,[3] has reviewed ~~and approved~~ this Report and its Appendices. The ~~CRAG~~ Advisory Group received a copy of the First Draft of the Report and Appendices on November 2, 2016 with a request for written comments by January 13, 2017. The Criminal Code Reform Commission revised its First Draft and Appendices based on ~~the~~ three sets of written comments that were timely received. The ~~CRAG~~ Advisory Group received a copy of the Second Draft of the Report and Appendices on January 25, ~~2016~~ 2017 with a request for written comments by February 27, 2017. No written comments were received on the

[2] D.C. Code § 22-1308:

> It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the City of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the City of Washington, under a penalty of not more than $5 for each and every such offense.

[3] *[Insert list of CRAG members and official titles.]*

Second Draft. The Criminal Code Reform Commission performed a final review of the draft recommendations and submitted a Voting Draft and Appendices to the Advisory Group on March 3, 2017. ~~revised its draft Report and Appendices based on the written comments that were timely received~~. ~~A copy of the CRAG written comments is attached as Appendix VIII of this Report.~~

On [~~DATE~~March 3], by a vote of [ENTER VOTE][4] the ~~CRAG~~ Advisory Group approved the final recommendations of the Criminal Code Reform Commission on these matters.] A copy of the Advisory Group's written comments is attached as Appendix VIII of this Report.

I. ARCHAIC AND UNUSED OFFENSES AND PROVISIONS TO REPEAL

Advancing its legislative mandate to "eliminate archaic and unused offenses,"[5] the Criminal Code Reform Commission has identified multiple D.C. Code offenses that it recommends for repeal. For information on the review process originally used to identify these offenses, see page 4 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified twelve offenses[6] and two penalty provisions[7] scattered across eight titles of the D.C. Code as archaic and unused, based, in part, upon a review of available adult sentencing and charging data.[8] The fact

[4] *[Insert vote breakdown, if necessary.]*
[5] *See supra* note 1.
[6] D.C. Code § 22-1003 (Rest, water and feeding for animals transported by railroad company); D.C. Code § 22-1012(a) (Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments); D.C. Code § 22-1308 (Playing games in streets); D.C. Code § 22-3303 (Grave robbery; buying or selling dead bodies); D.C. Code § 22-3320 (Obstructing public road; removing milestones); D.C. Code § 3-206 (Unlawful acts); D.C. Code § 4-125 (Assisting child to leave institution without authority; concealing such child; duty of police); D.C. Code § 9-433.01 (Permit required; exceptions); D.C. Code § 34-701 (False statements in securing approval for stock issue); D.C. Code § 34-707 (Destruction of apparatus or appliance of Commission); D.C. Code § 36-153 (Unauthorized use, defacing, or sale of registered vessel); D.C. Code § 47-102 (Total indebtedness not to be increased).
[7] D.C. Code § 8-305; D.C. Code § 9-433.02.
[8] To determine whether an offense is unused the Criminal Code Reform Commission reviewed two data sets it currently has access to: 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015. Although the two data sets overlap, they were provided on different dates and contain slightly different data. The data sets were provided by the D.C. Sentencing Commission using its Guidelines Reporting Information Data System (GRID System). The first data set is comprised of data received on March 10, 2014 (covering 2009-2013), and June 2, 2015 (covering 2014), and the second set is comprised of data received on April 6, 2016. It should be noted that the GRID System only includes adult information; it does not include juvenile information. It should also be noted that the Sentencing Commission gave notice in its 2015 Annual Report that some data had not been properly accounted for in previously provided data request responses: *See* page 33 of the *D.C. Sentencing Commission and Criminal Code Revision Commission 2015 Annual Report*, available at:

that an offense was not recently charged in adult court was a necessary, but not sufficient, condition for being deemed "archaic and unused" for purposes of this Report. The Criminal Code Reform Commission also sought consensus approval of its Advisory Group as to a list of "archaic and unused" offenses for purposes of this Report.

Appendix I lists the text of these archaic and unused offenses and provisions. The draft legislation to repeal these offenses is in Titles 1 and 5 of the bill in Appendix IX. The Criminal Code Reform Commission recommends repeal of an additional procedural provision as archaic and unused, D.C. Code § 22-2714, but neither the list of the archaic and unused provisions in Appendix I nor the draft legislation in Appendix IX contain § 22-1714 due to possible Home Rule Act restrictions.[9]

An example of one of the offenses recommended for repeal as archaic and unused is D.C. Code § 47-102, "Total indebtedness not to be increased," which provides:

> There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding 10 years, and by fine not more than the amount set forth in [§ 22‑3571.01].

Apart from an amendment to the fine amount for the offense under the Fine Proportionality Act in 2013, this felony has not changed since passed by Congress in

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http://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual%20Report%202015%20Website%205-2-16.pdf (last accessed 10/27/16). The Sentencing Commission also has given notice that there may be data reliability and validity issues with the supplied GRID data for 2009 and misdemeanors.
The Criminal Code Reform Commission has requested updated charging and sentencing data to confirm that the offenses identified as archaic and unused in this Report were not charged in 2010-2015, but has not yet received a response. With few exceptions, the offenses identified as archaic were passed by Congress in the late 19th or early 20th century and have undergone little or no subsequent amendment. There are two exceptions: 1) D.C. Code § 4-125 (Assisting child to leave institution without authority; concealing such child; duty of police), enacted in 1942; and 2) D.C. Code §§ 9–433.01 and 9-433.02 (Cutting Trenches in Highways), enacted in 2000, but identical to immediately preceding D.C. Code §§ 9–431.01 and 9-431.02, which were enacted in 1898. The reason for the unusual duplication of statutes for Cutting Trenches in Highways is unclear, as only one set of these statutes is necessary to prohibit the described conduct. The newer versions of the statutes rather than the originals are recommended for repeal, out of concern that the 2000 version may have been enacted in error.
The Criminal Code Reform Commission was unable to locate a single published D.C. Court of Appeals (DCCA) decision involving a defendant charged with, or convicted of, any of the offenses identified as archaic and unused.

[9] The District of Columbia Self–Government and Governmental Reorganization Act (Home Rule Act) provides, in relevant part, that: "The Council shall have no authority to…(8) Enact any act or regulation relating to…the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia." D.C. Code § 1-206.02(a). The procedural provision D.C. Code § 22-1714 concerns a requirement for witnesses to testify or produce documents in a proceeding concerning certain gambling offenses when doing so is necessary to the public interest "in the judgment of the United States Attorney."

1878. The statute predates the passage of the federal Antideficiency Act[10] and other laws addressing conduct that causes unauthorized indebtedness.

As noted in a D.C. Council Committee Report on a prior bill that repealed crimes determined to be outdated,[11] repealing archaic and unused crimes benefits the District's criminal justice system in multiple ways. Repeal of archaic and unused offenses prevents the "improper application of outmoded and unnecessary criminal penalties" and helps to "simplify the code so that it is more fair and transparent."[12] There is no loss to the Code's effectiveness because the conduct prohibited by these archaic and unused offenses is either covered by another broader or more recent provision of law, or is no longer a public concern.

B. Differences from 2015 Draft Legislation

With regard to the repeal of archaic and unused offenses and provisions, there are a few differences between this Report and the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015.

First, the archaic and unused offenses discussed in this Report that are currently located in Title 22 have simply been deleted from title 1 of Appendix IX, which enacts Title 22. These archaic and unused offenses will no longer be law if the legislation in Appendix IX is passed. The archaic and unused offenses that would be repealed from Title 22 are marked as "Repealed" in title 1 of the bill in Appendix IX. In the future, the Criminal Code Reform Commission plans to finalize a recommendation for the reorganization of Title 22 that eliminates the sections of the enacted Title 22 draft legislation marked as "Repealed."

Second, the Sentencing Commission in September 2015 recommended deleting as an archaic and unused offense § 22-3306, Defacing books, manuscripts, publications, or works of art. In this Report and the accompanying legislation in Appendix IX, however, § 22-3306 is not included for deletion to avoid possible Home Rule Act concerns.[13]

Third, the Sentencing Commission in September 2015 recommended deleting as an archaic and unused five property offenses that appear to be covered by other District property offenses: (1) Destroying or defacing public records (D.C. Code § 22-3307); (2) Destroying boundary markers (D.C. Code § 22-3309); (3) Destroying or defacing building material for streets (D.C. Code § 22-3313); (4) Destroying cemetery railing or

[10] 31 U.S.C. § 1341.
[11] Council of the District of Columbia, *Judiciary Committee Report on Bill 15-79, the "Elimination of Outdated Crimes Amendment Act of 2003,"* June 23, 2003.
[12] Council of the District of Columbia, *Judiciary Committee Report on Bill 15-79, the "Elimination of Outdated Crimes Amendment Act of 2003,"* June 23, 2003 at 1.
[13] Section 22-3306 specifically mentions property of the United States. D.C. Code § 1-206.02(a)(3) ("The Council shall have no authority to . . Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.").

tomb (D.C. Code § 22-3314); and (5) Placing obstructions on or displacement of railway tracks (D.C. Code § 22-3319). In this Report and the accompanying legislation in Appendix IX, however, these five offenses are not included for deletion due to differing opinions by the Advisory Group.

Finally, the Criminal Code Reform Commission recommends two conforming amendments to accommodate the deletion of two of the archaic and unused offenses, D.C. Official Code § 8-304[14] and § 36-153.[15] The conforming amendments are included in title 5 of the proposed legislation in Appendix IX. The Criminal Code Reform Commission also recommends that Council's Office of the General Counsel amend the title of § 36-154 to "Use or possession of vessel without purchase" to more accurately describe the offense codified therein.

II. TECHNICAL AMENDMENTS TO CORRECT OUTDATED LANGUAGE

Further addressing its legislative mandate to "use clear and plain language,"[16] the Criminal Code Reform Commission has identified statutory provisions throughout the D.C. Code that it recommends for technical amendments, including: 1) references to government agencies that have been succeeded by another agency or renamed (e.g., "Corporation Counsel" or "Workhouse of the District of Columbia"); 2) unnecessarily gendered language; and 3) statutory designations of prosecutorial authority in clear violation of the Home Rule Act under the DCCA's 2009 ruling in *In re Crawley*.[17] For information on the review process originally used to identify these technical amendments, see pages 6-7 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified thirty-seven statutes in eleven titles of the D.C. Code that contain outdated language within the above stated parameters. The Criminal Code Reform Commission recommends corrective technical amendments that will clarify the D.C. Code without making any substantive change to the law.

The technical amendments are listed in Appendix II. The draft legislation to make these amendments is in titles 1 and 2 of the bill in Appendix IX. Outdated

[14] D.C. Official Code § 8-304 refers to § 8-305, which is recommended for deletion. The conforming amendment for § 8-304 replaces the reference to § 8-305 with the penalty information currently codified in § 8-305.
[15] D.C. Official Code § 36-154 refers to § 36-153, which is recommended for deletion. The conforming amendment for § 36-154 replaces the reference to § 36-153 with the penalty information currently codified in § 36-153.
[16] *See supra* note 1.
[17] 978 A.2d 608, 620 (D.C. 2009) (holding that the statutory designation of the Office of the Attorney General as prosecutorial authority for D.C. Code § 2-381.09, which criminalizes false claims against the District government, exceeded the Council's authority under the Home Rule Act).

references to institutions were located in fifteen offenses, many of which pertain to "Corporation Counsel," which is now the Attorney General for the District of Columbia. Twenty-four instances of unnecessarily gendered language and two instances of clearly improper delegations of prosecutorial authority under *In re Crawley* were identified.[18]

An example of an outdated, improper delegation of prosecutorial authority is D.C. Code § 2-381.09, the District's false claims statute, which states that, "The Attorney General for the District of Columbia shall prosecute violations of this section." However, D.C. Code § 23-101 specifies a limited set of offenses that may be prosecuted by the Attorney General for the District of Columbia (OAG), while all other crimes are to be prosecuted by the United States Attorney's Office for the District of Columbia (USAO). The D.C. Court of Appeals held in *In re Crawley* that an OAG prosecution of the false claims statute was improper. The court reasoned that, per D.C. Code § 23-101, the false claims statute should have been prosecuted by the USAO, and, per the Home Rule Act, the Council may not enact legislation that affects the "duties or powers" of the U.S. Attorney's Office.[19] Unfortunately, neither the false claims statute nor the other statutes that clearly and improperly delegate prosecutorial authority have been corrected in the D.C. Code to reflect the holding in *In re Crawley*.

B. Differences from 2015 Draft Legislation

With regard to the identification of criminal statutes in need of technical amendment, there are a few differences between the process followed for this Report and the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015. For this Report and its accompanying legislation, the Criminal Code Reform Commission examined all statutes in Title 22, as well as a smaller set of non-Title 22 offenses that are criminal in nature. The non-Title 22 offenses were limited to offenses that are actually in use, based on two sets of data provided by the D.C. Sentencing Commission: 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015.[20]

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[18] The total number of edits exceeds the number of statutes due to some statutes being edited for both outdated institution names and gendered language.

[19] D.C. Code § 1-206.02(a)(8).

[20] Although there is some overlap between the two data sets, they were provided on different dates and contain slightly different data. The first data set is comprised of data received on March 10, 2014 (covering 2009-2013), and June 2, 2015 (covering 2014), and the second set is comprised of data received on April 6, 2016. As noted above, these two data sets were provided by the D.C. Sentencing Commission, which generated the sets using its Guidelines Reporting Information Data System (GRID System).
It should be noted that the GRID System only includes adult information; it does not include juvenile information. It should also be noted that the Sentencing Commission gave notice in its 2015 Annual Report that some data had not been properly accounted for in previously provided data request responses: *See* page 33 of the *D.C. Sentencing Commission and Criminal Code Revision Commission 2015 Annual Report*, available at:
http://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual%20Report%2015%20Website%205-2-16.pdf (last accessed 10/27/16). The Sentencing Commission also has

In addition, for the offenses that were included in the 2015 Report that was submitted to the Council, additional instances of gendered language were identified and corrected.[21]

Finally, title I of the legislation in Appendix IX, which enacts Title 22, makes technical amendments directly to the statutes in Title 22. These changes will become law if the legislation in Appendix IX is passed and Title 22 becomes an enacted title.

III. UNCONSTITUTIONAL STATUTES TO AMEND

In response to its mandate to "[i]dentify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment," the Criminal Code Reform Commission recommends amendments to two criminal offenses. For information on the process used to review relevant court opinions, see page 8 of the "Report on Enactment of the D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified two current D.C. Code offenses as containing unconstitutional provisions, and both are recommended for amendment: D.C. Code § 7-2506.01, Unlawful Possession of Ammunition (UA), and D.C. Code § 22-4512, Alteration of Identifying Marks of Weapons (AIM).[22] Titles 1 and 3 in the bill in Appendix IX amend both offenses.

1. D.C. Code § 7-2506.01, Unlawful Possession of Ammunition (UA).

The DCCA has held that the crime of UA unconstitutionally punishes behavior that is protected by the Second Amendment.[23] The DCCA also held, however, that a conviction for UA is permissible if the government adopts the burden of proving beyond

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given notice that there may be data reliability and validity issues with the supplied GRID data for 2009 and misdemeanors.

[21] D.C. Code §§ 22-302; 22-722; 22-935; 22-1311; 22-1406; 22-1702; 22-1810; 22-3214.01; 22-3226.01; 22-4504.02; 24-241.05; 47-2829; 50-2201.05b. Appendix II contains the specific revisions to these statutes. Several of the Title 22 statutes for which the 2015 Report recommended technical revisions are now recommended for relocation out of Title 22. Of these statutes, an instance of unnecessarily gendered language was identified and recommended for correction in § 22-2714. Appendix V lists the Title 22 statutes recommended for removal and includes recommendations for technical amendments to those statutes.

[22] The Sentencing Commission previously gave the Council notice of the unconstitutionality of D.C. Code § 22-2511, Presence in a Motor Vehicle Containing a Firearm (PMVCF), in its 2013 Annual Report. *See D.C. Sentencing and Criminal Code Revision Commission 2013 Annual Report*, at 84-85 (April 25, 2014). The Council has since repealed the PMVCF statute. *See* License to Carry a Pistol Amendment Act of 2014, Act No. 20-621 (D.C. Law 20-279), effective June 16, 2015.

[23] *Herrington v. United States*, 6 A.3d 1237, 1240 (D.C. 2010).

a reasonable doubt an additional element not present in the statute.[24] Thus, the statute has not been declared wholly unconstitutional, and the defect may be cured by incorporating the DCCA's holding into the text of the offense.[25] Specifically, if the statute is amended to include the extra element of the offense now required by the DCCA, then the offense should survive constitutional scrutiny in the future.[26]

The DCCA ruling of unconstitutionality appears to be widely accepted in current legal practice, but has not resulted in a change to the D.C. Code. Pattern jury instructions frequently used in the District already recognize that the government has the burden of proving this extra element at trial.[27]

To bring clarity to the criminal code, the Criminal Code Reform Commission recommends that the additional element deemed constitutionally necessary be explicitly codified in the statute. The agency has amended the offense language in title 3 of Appendix IX to: 1) ensure that the constitutional rights of persons in the District are respected; 2) clarify to the general public what precisely constitutes the crime of UA; and 3) guide practitioners in the future.

2. D.C. Code § 22-4512, Alteration of Identifying Marks of Weapons (AIM).

The DCCA has held that a portion of the AIM statute is unconstitutional.[28] AIM punishes a person who alters or obliterates serial numbers on firearms. Unlike UA, the DCCA has not declared the statutory elements of the offense to be unconstitutional. Rather, the DCCA evaluated a smaller provision within the AIM statute and held that it violated due process.

The unconstitutional provision in the AIM statute is its permissive inference, or statutory presumption. In criminal law, a permissive inference is a provision that allows a jury to assume one fact from another. Thus, a statute may require that the government prove some fact, X. But the statute may also say that, rather than proving X, the government may instead prove Y, from which the jury may infer X, in order to meet its burden of proving X.

In AIM, one element the government must prove is that the defendant obliterated serial marks on a firearm. But the statute's permissive inference allows the government to instead prove only that the defendant possessed a weapon with obliterated serial marks.

[24] *Id.* at 1245. The DCCA held in *Herrington* that a conviction for UA is permissible if the government adopts the burden of proving beyond a reasonable doubt that the defendant had not lawfully registered a firearm that takes ammunition of the same caliber or gauge as the particular ammunition at issue.
[25] *See supra* note 24.
[26] *See supra* note 24
[27] *See* D.C. Crim. Jur. Instr. § 6.505 (including the added element). The D.C. Criminal Jury Instructions, referred to as the "Redbook" by practitioners, are a useful guide to the current practice of criminal law in the District. The Criminal Code Reform Commission emphasizes, however, that the Redbook is not a binding source of law.
[28] *Reid v. United States*, 466 A.2d 433, 435-36 (D.C. 1983).

The statutory presumption permits the jury to infer that a person who possesses a weapon with obliterated markings is the same person who did, in fact, obliterate those markings, thus rendering that person guilty of AIM.

Applying Supreme Court precedent that requires a permissive inference to survive a "more likely than not" test, the DCCA has held that the AIM statute's permissive inference violates due process. The DCCA reasoned that because guns frequently change hands it is not "more likely than not" that a person who merely possesses a weapon with obliterated markings is the same person who obliterated the markings.[29] The court accordingly held that the permissive inference is unconstitutional.

To bring clarity to the criminal code, the Criminal Code Reform Commission recommends that the statutory presumption, which DCCA case law says renders the offense unconstitutional, be deleted. The agency has amended the language for D.C. Code § 22-4512 in title 1 of the bill in Appendix IX, which enacts Title 22, to remove the AIM statute's permissive inference.

B. Differences from 2015 Draft Legislation

There are no substantive differences between the amendment of UA and AIM in this Report and the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015. However, title 1 of the bill in Appendix IX, which enacts Title 22, amends the AIM offense, D.C. Code § 22-4512, directly. When the legislation in Appendix IX is passed, the revised AIM offense will become the law because Title 22 will be an enacted title.

IV. COMMON LAW OFFENSES TO REPEAL AND FURTHER CODIFY

To "[i]dentify any crimes defined in common law that should be codified,"[30] the Criminal Code Reform Commission examined District judicial opinions and D.C. Code criminal offenses. For more information on the review process used to identify these offenses, see pages 11-12 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified nineteen crimes whose elements are currently defined only in court opinions (common law), rather than in the D.C. Code. For sixteen of these offenses,[31] statutes in the current D.C. Code codify the

[29] *Reid*, 466 A.2d at 435-36.
[30] *See supra* note 1.
[31] D.C. Code § 11-944 (Contempt); D.C. Code § 22-401 (Assault with intent to kill, rob, or poison or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse); D.C. Code § 22-402 (Assault with intent to commit mayhem or with a dangerous weapon); D.C. Code § 22-403 (Assault with intent to commit any other offense); D.C. Code § 22-404 (Assault or threatened assault in a menacing manner; stalking); D.C. Code § 22-406 (Mayhem or malicious disfiguring); D.C. Code § 22-407 (Threats

penalties of the offenses, but not the elements. For example, current D.C. Code § 22-2105 merely states "Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01."

The remaining three common law offenses that the Criminal Code Reform Commission identified are not mentioned anywhere in the D.C. Code: 1) negligent escape; [32] 2) disturbing public worship;[33] and 3) being a common scold.[34]

Negligent escape occurs when a "party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again, before he hath lost the sight of him."[35] In other words, it is a crime for police or jail officials to fail to pursue an escapee. The last documented case of a defendant being prosecuted and convicted of this offense was in 1948.[36] The offenses of disturbing public worship[37] and being a common scold[38] arise from cases decided in the early 1800s.

An individual could potentially be held liable for any of these three offenses recognized in common law because the reception statute in D.C. Code § 45-401 recognizes the validity of common law offenses.[39] Moreover, given the broad scope of the reception statute, it is possible that many additional common law offenses exist that simply have not been charged or recorded in the District's appellate case law.[40]

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to do bodily harm); D.C. Code § 22-1301 (Affrays); D.C. Code § 22-1803 (Attempts to commit a crime); D.C. Code § 22-1805 (Aiding and abetting); D.C. Code § 22-1805a (Conspiracy); D.C. Code § 22-1806 (Accessories after the fact); D.C. Code § 22-2105 (Manslaughter); D.C. Code § 22-2107 (Solicitation of murder or other crimes of violence); D.C. Code § 22-2722 (Keeping bawdy or disorderly houses); D.C. Code § 48-904.09 (Attempt, conspiracy for drug offenses).
Some of the above-cited statutory sections arguably contain multiple offenses. However, for purposes of tallying common law crimes the prohibitions in these statutory sections were treated as one offense.

[32] *United States v. Davis*, 167 F.2d 228, 229 (D.C. Cir. 1948).

[33] *United States v. Brooks*, 24 F. Cas. 1244, 1245 (C.C.D.D.C. 1834). D.C. Official Code § 22-1314, Disturbing Religious Congregation, was repealed and replaced with D.C. Official Code § 22-1321(b).

[34] *United States v. Royall*, 27 F. Cas. 906, 910 (C.C.D.D.C. 1829).

[35] *Davis*, 167 F.2d at 229.

[36] *Id.* at 229.

[37] *Brooks*, 24 F. Cas.at 1245.

[38] *Royall*, 27 F. Cas. At 910.

[39] The District's reception statute, § 45-401, states that "the common law . . . in force in Maryland on February 27, 1801 . . . shall remain in force except insofar as the same are inconsistent with, or are replaced by, some provision of the 1901 Code." By 1801. Maryland had adopted all British common law as of 1776. *See Wisneski v. State*, 921 A.2d 273, 279-80 (Md. 2007); Section 3 of Maryland's Original Declaration of Rights. Therefore, under the reception statute, any common law offenses recognized under British common law as of 1776 are prosecutable offenses under current District law. It is possible that additional common law offenses exist that have never been charged in the District.

[40] Under the reception statute, any common law offenses recognized under British common law as of 1776 are prosecutable offenses under current District law. *See supra note* 39. It is possible that additional common law offenses exist that have never been charged in the District.

Common law offenses may still result in substantial penalties. The District also has a general penalty statute which provides for a penalty of up to $1,000 or up to five (5) years imprisonment, or both, for violations of "any criminal offense not covered by the provisions of any section of this [D.C.] Code, or of any general law of the United States not locally inapplicable in the District of Columbia."[41] Together with the reception statute, the general penalty statute of the D.C. Code allows for convictions of crimes described only in judicial opinions, including opinions in other American jurisdictions and England[42] that may date back centuries.

The Criminal Code Reform Commission recommends that the sixteen common law offenses that have statutorily defined penalties be fully defined in the D.C. Code, and that the three additional common law offenses be repealed. Pursuant to its mandate, the Criminal Code Reform Commission will propose recommended language to codify many of the offenses that currently only have a penalty codified in the code. In addition, the Criminal Code Reform Commission recommends amending the District's reception statute, D.C. Code § 45-401, which would abolish any unidentified common law offenses. Amending the District's reception statute, as proposed in title 4 of the bill in Appendix IX, would not affect the validity of the District's codified criminal statutes, including D.C. Official Code § 22-1321.

All common law offenses identified by the Criminal Code Reform Commission are listed in Appendix IV.

B. Differences from 2015 Legislation

The Criminal Code Reform Commission has identified two additional common law offenses that were not included in the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015. In two cases from the early 1800s, defendants were charged with the common law offenses of disturbing public worship[43] and being a common scold.[44] The Criminal Code Reform Commission was unable to find any subsequent cases in which defendants were prosecuted for either of these common law offenses in the last 180 years, but presumably they could still be prosecuted under the reception statute in D.C. Code § 45-401 and penalized for up to five years under D.C. Code § 22-1807.

[41] D.C. Code § 22-1807.
[42] When the District was formed in 1801, the portion of the District that territorially had belonged to Maryland adopted Maryland common law as of 1801. Maryland common law, in turn, reflected the adoption of English common law as it existed as of November 3, 1776, except as explicitly repealed by the Maryland legislature. *See Wisneski v. State*, 921 A.2d 273, 279-80 (Md. 2007); M.D. Const. Decl. of Rights, art. III.
[43] *Brooks*, 24 F. Cas.at 1245.
[44] *Royall*, 27 F. Cas. at 910.

V. RELOCATION OF TITLE 22 PROVISIONS TO OTHER D.C. CODE TITLES

Advancing its legislative mandate to "organize existing criminal statutes in a logical order,"[45] the Criminal Code Reform Commission recommends relocating several provisions from Title 22 of the D.C. Code to other titles. For information on the review process used to identify these statutes, see page 15 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified 127 statutes in Title 22 that it recommends for relocation to other D.C. Code titles. In many instances the Criminal Code Reform Commission has developed suggestions on the appropriate new title for these relocated statutes. All Title 22 statutes recommended for relocation (and, if applicable, suggestions for the title to which they should be relocated) are listed in Appendix V. Appendix V also lists technical amendments that the Criminal Code Reform Commission recommends for these relocated statutes.

For example, Chapter 42A of Title 22 (D.C. Code §§ 22-4231 through 22-4244) creates and describes the duties of the D.C. Criminal Justice Coordinating Council. None of these statutes describe a criminal offense, and it is unclear why the provisions should not be moved to Title 3 of the D.C. Code which includes the organic legislation for other criminal justice bodies such as the Sentencing Commission. Another example is Chapter 38, Sexual Psychopaths, which sets forth the requirements for the civil commitment of certain criminal offenders, but contains no actual criminal prohibitions. These types of statutes logically belong in other titles of the D.C. Code.

Because Title 22 is not an enacted title, no bill is necessary to relocate the identified statutory provisions out of the title. The Council's Office of the General Counsel will determine where to relocate these titles; the Council need not decide where to move these relocated titles.

However, conforming amendments will be necessary throughout the entire D.C. Code to update references to the relocated statutes. Specifically, before the proposed enactment legislation in title 1 of the bill in Appendix IX can be passed, the following statutes in Title 22 will need conforming amendments because they refer to statutes that are relocated out of Title 22:

1. D.C. Official Code § 22-2701.01: Refers to §§ 22-2713 through 22-2720.
2. D.C. Official Code § 22-1831: Refers to §§ 22-2713 through 22-2720.
3. D.C. Official Code § 22-1839: Refers to § 22-3022(b).

[45] *See supra* note 1.

4. D.C. Official Code § 22-3226.06: Refers to § 22-3226.09.
5. D.C. Official Code § 22-4134: Contains terms that are defined in § 22-4131.
6. D.C. Code § 22-4329: Refers generally to the provisions and authority of this "chapter," which is otherwise being relocated.
7. D.C. Code § 22-4331: Refers generally to the requirements in the "chapter," which is otherwise being relocated.
8. D.C. Official Code § 22-4015: Refers generally to the requirements in the "chapter," which is otherwise being relocated.

The Criminal Code Reform Commissions recommends that the Office of the General Counsel check for other conforming amendments that may be necessary in Title 22.

B. Differences from 2015 Draft Legislation

Unlike the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015, title 1 of the bill in Appendix IX, which enacts Title 22, deletes the provisions relocated from Title 22 and marks these provisions as "Transferred." The practice of marking statutory sections in Title 22 that previously held content as "Transferred," "Repealed," or "Reserved" is continued in title 1 of the bill in Appendix IX.

Three additional statutes, § 22-4251, "Comprehensive Homicide Elimination Strategy Task Force established," § 22-1842, "Training Program" (that MPD and other agencies are required to provide on human trafficking), and § 22-1843 "Public Posting of Human Trafficking Hotline" are recommended for removal from Title 22. In addition, § 22-4331, which codifies a penalty for violations of Game and Fish laws in Chapter 43 of Title 22, and § 22-4329, which codifies an offense, are no longer recommended for removal in this Report. Section 22-4331 is a penalty provision and an Advisory Group comment suggested not removing § 22-4329 at this time. The remainder of Chapter 43 is still recommended for removal.

VI. ENACTMENT OF TITLE 22

To "[e]nable the adoption of Title 22 as an enacted title of the District of Columbia Official Code,"[46] the Criminal Code Reform Commission has prepared title I of the proposed legislation in Appendix IX, the "Enactment of Title 22 and Criminal Code Amendments Act of 2017." The text of title I of the bill in Appendix IX reflects the changes to Title 22 statutes discussed in this Report and the text of Title 22 in the D.C. Official Code as of April 5, 2016, when the online LexisNexis D.C. Official Code was last updated at the time this Report and accompanying appendices were prepared.[47]

[46] *See supra* note 1.

[47] The Report and accompanying appendices were prepared in October 2016. Before the Council can vote on title 1 of Appendix IX, which enacts Title 22, the Council's Codification Counsel will need to update

For information on the review process used to determine the text of Title 22 of the D.C. Official Code, see pages 17-19 of the of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

"Enactment" of Title 22 refers to legislative adoption of the text of Title 22 as a single authoritative law. Currently, Title 22 is not enacted, which means that the Council's "D.C. Official Code" text for Title 22 has never been legislatively adopted and is not a legally binding statement of the law. The current "D.C. Official Code" text for Title 22 is merely "prima facie"[48] evidence of the numerous criminal laws that have been adopted by the legislature since the founding of the District. Codification lawyers[49] over time have compiled the District's legislatively approved laws into the current unenacted Title 22 that is in D.C. Official Code.

The compilation of criminal laws into Title 22 is essential for the public and practitioners to efficiently locate District criminal laws. But, so long as Title 22 remains unenacted, even the D.C. Official Code text remains a cutting and pasting of past legislatively approved laws (and, as described below, errors may occur in that process). Moreover, every time the Council changes a criminal statute that appears in the unenacted Title 22, it must laboriously locate and amend the original legislatively approved criminal statute, which may be decades or a century old, as well as any subsequent amendments. However, if the Council enacts Title 22 as provided in title 1 of Appendix IX, and approves it as a whole law, future legislative changes to Title 22 will be less laborious. Future amendments would only require that Title 22 itself be amended, rather than the original law and all the subsequent amendments created thereafter.

A. Findings

The Criminal Code Reform Commission recommends the resolution of over a dozen discrepancies between the text of Title 22 in the D.C. Official Code and the original legislation (and amendments) that are the source of Title 22. All identified discrepancies are discussed in Appendix VI.

Most of these discrepancies between the text of Title 22 in the D.C. Official Code and the original legislation (and amendments) are minor, and their resolution is obvious. For example, D.C. Code § 22-4514, Possession of certain dangerous weapons prohibited, states that members of the "Air Force" are exempt from a provision of the statute.

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the bill to reflect any criminal laws or amendments that have become effective since April 5, 2016, to the date of the Council vote to enact Title 22.

[48] *See Burt v. District of Columbia*, 525 A.2d 616, 619 & n.3 (D.C. 1987) ("The District of Columbia Code establishes prima facie the laws of the District of Columbia.") (citing 1 U.S.C. § 204(b)). Under its general legislative authority, D.C. Official Code § 1-203.02, the Council has previously enacted multiple Titles of the D.C. Code, such as Title 29 (Business Organizations) and Title 47 (Taxation and Fiscal Affairs).

[49] The Council's Office of General Counsel currently has a Codification Counsel who is primarily responsible for updating Title 22 (and other titles) as new legislation is approved. Decisions about the numbering, formatting, and location of the text of a new criminal law are up to the Codification Counsel.

However, the underlying organic legislation does not mention "Air Force." Rather, "Air Force" appears to have been added by codification counsel after the Air Force became a branch of the armed services. The inclusion of "Air Force" in D.C. Code § 22-4514 appears to be consistent with Congressional intent for the statute, but lacks an identifiable foundation in law. The Criminal Code Reform Commission's recommendation is to resolve this discrepancy by explicitly adding "Air Force" into the enacted text of Title 22, providing a legal basis for that term.

B. Differences from 2015 Draft Legislation

Unlike the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015, title 1 of the bill in Appendix IX, which enacts Title 22, resolves the discrepancies between the current text of Title 22 in the D.C. Official Code and the underlying organic legislation. When the legislation in Appendix IX becomes law, the resolution of these discrepancies in Title 22 will become the law because they will be the text of an enacted Title 22. The underlying organic legislation will be repealed.

In addition to resolving the discrepancies between the organic legislation and the text of Title 22 in the D.C. Official Code, title 1 of the bill in Appendix IX makes many other amendments discussed elsewhere in this Report directly to the text of Title 22:

1. Repealing archaic and unused offenses and provisions (Part I of this Report);
2. Technical amendments to correct outdated or unnecessarily gendered language and improper delegations of prosecutorial authority (Part II of this Report); and
3. Amending unconstitutional statutes (Part III of this Report).

If the proposed legislation in Appendix IX is approved and becomes law, these amendments will become part of the enacted Title 22.

Enactment of Title 22 as provided in title 1 of the bill in Appendix IX will make no change to existing criminal statutes to Title 22 other than the specific amendments and the resolved discrepancies which are clearly stated in the "Statement of Legislative Intent." Established judicial canons of construction state that legislative intent is the primary principle of statutory interpretation[50] and the proposed enactment legislation,

[50] When interpreting the meaning of a statute, the DCCA "first look[s] at the language of the statute by itself to see if the language is plain and admits of no more than one meaning." *Peoples Drugs Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (*en banc*). Although the plain meaning rule is "certainly the first step in statutory interpretation, it is not always the last or most illuminating step." *Id.*); *see also In re Smith*, 138 A.3d 1181, 1184-86 (D.C. 2016) (stating that the plain language of a statute must be the court's "starting point for statutory interpretation" and finding that the language of the statute at issue was plain, but also analyzing the ~~legislative history and legislative intent in~~ structure and objectives of the statute). The DCCA has "found it appropriate to look beyond the plain language meaning of statutory language in several different situations," including to "'effectuate the legislative purpose' . . . as determined

title 1 of the bill in Appendix IX, flatly states in the "Statement of Legislative Intent for the Enactment of Title 22":

> The Council of the District of Columbia finds it necessary to enact Title 22. The Council does not intend enactment of Title 22 to substantively change the laws therein, except for the specific changes noted in this Statement of Legislative Intent for the Enactment of Title 22. Nor does the Council intend enactment of Title 22 to indicate legislative approval or disapproval of any court decisions construing the laws therein.

By adopting this language in Appendix IX the Council would explicitly reject any argument that the Council intended for enactment to substantively change Title 22 other than through the specified amendments in the Statement of Legislative Intent, or that prior court rulings construing the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment.[51]

The Commission's Advisory Group members had differing opinions as to whether, beyond the statement of intent in the preface of the draft bill, it also was necessary and proper to codify a short statement of legislative intent at the beginning of enacted Title 22. With the agreement of the Code Revision Advisory group, the Commission therefore qualifies its recommendations regarding enactment of Title 22 and the draft bill in Appendix IX with a request that the Council's Office of the General Counsel consider this matter.

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by a reading of the legislative history or by an examination of the statute as a whole." *Id.* at 754 (quoting *Mulky v. United States*, 451 A.2d 855, 857 (D.C. 1982)); s*ee, e.g.*, *Floyd E. Davis Mortgage Corp. v. District of Columbia*, 455 A.2d 910, 911 (D.C. 1983) (*per curiam*) ("[A] statute is to be construed in the context of the entire legislative scheme."); *Dyer v. D.C. Department of Housing and Community Development*, 452 A.2d 968, 969–70 (D.C. 1982) ("The use of legislative history as an aid in interpretation is proper when the literal words of the statute would bring about a result completely at variance with the purpose of the Act."); *District of Columbia v. Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968) ("[T]he 'plain meaning' doctrine has always been subservient to a truly discernible legislative purpose however discerned, by equitable construction or recourse to legislative history.").

[51] Without a clear statement of legislative intent that enactment is not intended to indicate approval of past court interpretations of the unenacted statutes, it is possible that courts would infer such legislative approval. The DCCA has recognized that "reenactment of a statute without change in its language indicates approval of interpretations rendered prior to the reenactment," and that, "if the court interprets a statute and the legislature fails to take action to change that interpretation, it is presumed that the legislature has acquiesced in the court's interpretation." *Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1275-76 (D.C. 1987) (quoting 2A SUTHERLAND ON STATUTORY CONSTRUCTION, § 45.12, at 55 (Sands 4th ed. 1985)). However, neither the *Marshall* court nor any other controlling District case law has involved an enactment bill affirmatively stating that it may not be construed as making a substantive change in law or that the legislature does not intend~~ed~~ for enactment to indicate legislative approval or disapproval of court decisions.

VII. CONCLUSION

The recommendations in this Report are essential to any modernization of the District's criminal statutes. Clearly archaic and outdated criminal statutes like "Playing games in streets" should be repealed. Outdated references to the District's "Workhouse" and unnecessarily gendered language should be corrected. Sections of criminal statutes that courts have held to be unconstitutional and are no longer used in practice should be struck from the D.C. Code. The possibility of being convicted of judicially-created common law offenses, which have not been created by the legislature nor been used in decades, should be eliminated. Extraneous procedural and non-criminal provisions in Title 22 of the D.C. Code should be relocated to other titles, limiting Title 22 to a compilation of District criminal offenses and penalties. Lastly, the entire text of Title 22 of the D.C. Official Code should be enacted as a single whole to ease the administrative burden of making future amendments.

While essential, the recommendations in this Report are only a small portion of the work that is necessary to create a modern criminal code for the District. Even among the topics addressed in this Report, there remains work to be done. For example, hundreds of crimes—nearly all misdemeanors linked to regulatory violations of some sort—scattered outside Title 22 of the D.C. Code merit further review as to whether they should be repealed as archaic and unused. More urgently, the commonly used felonies and misdemeanors in Title 22 need to be revised to describe all their elements, reduce unnecessary overlap and gaps in liability, use consistent definitions and clear language, and have proportionate penalties. This is the work that the Criminal Code Reform Commission will turn to next. Given the relatively uncontroversial nature of its recommendations and the immediate improvements they will bring to the clarity and functionality of the District's criminal statutes, the Criminal Code Reform Commission submits this Report and accompanying Appendices for Council and Mayoral consideration as it develops further reform recommendations.