



MURIEL BOWSER
MAYOR

February 7, 2023

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Ave., NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Today I am introducing the “Revised Criminal Code Amendment Act of 2023.” While I support a revision and modernization of our criminal code, the revised criminal code approved by the Council last year does not fully reflect the core values of our residents. We must recenter the conversation on the safety of our residents and our communities, and ensuring that there are appropriate consequences when individuals choose to harm and threaten our residents and communities— while we also continue our robust efforts to address the root causes of violent crime and criminal behavior. In enacting changes to our criminal code, the Council went far beyond a modernization of our laws and included controversial policy proposals best addressed in stand-alone bills where the public can provide feedback.

My bill addresses the most problematic provisions of the Council legislation by restoring current penalties for illegally carrying guns and committing violent crimes like carjackings, robberies, and home invasion burglaries. Furthermore, my bill repeals the highly controversial provisions around jury demandability and the early release from prison for convicted violent felons, which were included in the Council legislation with no real opportunity for public input and without the thoughtful discussions between the legislative, executive, and judicial branches that are necessary to consider and address the negative impacts of those provisions. If the Council wishes to move these two provisions, it should hold public hearings and engage fully in the necessary dialogue with the other branches of government. The judicial branch has noted repeatedly that these measures will result in a massive caseload increase at the courts and a huge strain on judicial resources while at the same time significantly increasing our residents’ requirement to respond to jury duty summonses. I fear these provisions will greatly diminish the courts’ ability to process cases and produce timely justice for crime victims.

Finally, my bill moves the implementation date of the Council’s legislation from October 1, 2025 to January 1, 2027. The Council legislation comes with an almost \$50 million cost and will require the retraining every local, federal, and private police officer with arrest powers in the District, and significant updates to the information technology systems of executive agencies and the judicial branch. The majority of the work cannot even start until the legislation is funded.

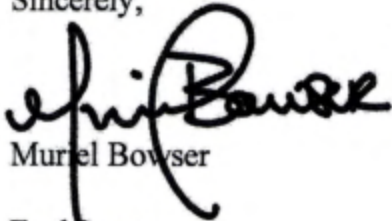
January 2027 will allow three years from the time funding becomes available before the changes take effect.

Chief Judges Anita Josey-Herring and Anna Blackburne-Rigsby, U.S. Attorney Matthew Graves, and Chief of Police Robert Contee have each expressed their significant concerns about the Council legislation, including our shared assessment that the implementation timeline is unrealistic for system-wide changes of this magnitude.

A complete overhaul of our criminal laws is a once-a-century opportunity. It is critical that we ensure we get it right.

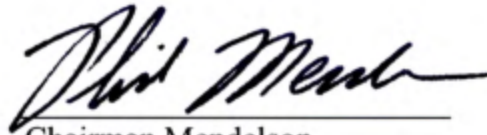
I look forward to Council holding a public hearing on my bill as soon as possible. If you have any questions on the bill, please contact Lindsey Appiah, Acting Deputy Mayor for Public Safety and Justice, at lindsey.appiah@dc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser". The signature is stylized and cursive, with a large initial "M" and "B".

Muriel Bowser

Enclosures



Chairman Mendelson
At the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Revised Criminal Code Act of 2022 to amend the definitions of comparable offense and possession of a firearm by an unauthorized person so that individuals convicted of felonies under current law may later be charged with possession of a firearm by an unauthorized person after the effective date of the Revised Criminal Code Act of 2022, to amend the elements required to establish an unauthorized use of a motor vehicle offense and penalties for the offense, to amend first degree burglary to clarify that a person does not have to directly perceive the actor while the actor is inside, to amend elements for resisting arrest, to amend blocking a public way to include public and private blocking, to increase the penalties for unauthorized use of a motor vehicle, first degree burglary, carrying a dangerous weapon, possession of a firearm by an unauthorized person, robbery, and carjacking, to create new penalty enhancements for carjacking and robbery offenses, and to repeal section 202 of Title II that expands the right to a jury trial, to repeal section 205(b) of Title II that expands modifications of imposed terms of imprisonment, and to change the applicability date to January 1, 2027.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Revised Criminal Code Amendment Act of 2023”.

Sec. 2. The Revised Criminal Code Act of 2022, enacted January 17, 2023 (D.C. Act 24-789), is amended as follows:

(a) Section 22A-101 is amended as follows:

(1) Paragraph (20) is amended to read as follows:

“(20) Comparable Offense” means an offense committed against the District of Columbia, a state, a federally recognized Indian tribe, or the United States and its

1 territories that involved conduct that would, if committed in the District of Columbia, either
2 constitute or be substantially similar to:

3 “(A) An offense under this title or other District law; or

4 “(B) An offense under District law no more than six months before
5 the applicability date of this act.”

6 (b) Section 22A-3203 is amended as follows:

7 (1) Subsection (a) is amended as follows:

8 (A) The lead-in language is amended by striking the word “actor” and
9 inserting the phrase “actor in fact” in its place.

10 (B) Paragraph (1) is amended by striking the phrase “Knowingly operates”
11 and inserting the word “Uses or operates” in its place.

12 (2) Subsection (c) is amended to read as follows:

13 “(c) *Penalties.* Unauthorized use of a motor vehicle is a Class 6 felony.”.

14 (c) Section 22A-3801 is amended as follows:

15 (1) Subsection (a) is amended as follows:

16 (A) Paragraph (3) is amended by striking the semicolon at the end and
17 inserting the phrase “; and” in its place.

18 (B) Paragraph (4) is amended by striking the phrase “; and” and inserting a
19 period in its place.

20 (C) Paragraph (5) is repealed.

21 (2) Subsection (d) is amended as follows:

22 (A) Paragraph (1) is amended to read as follows:

23 “(1) First degree burglary is a Class 3 felony.”.

1 (B) Paragraph (2) is amended by striking the phrase “Class 8” and
2 inserting the phrase “Class 5” in its place.

3 (d) Section 22A-4404(a)(2)(ii) is amended by striking the word “substantial.”

4 (e) Section 22A-5203 is amended to read as follows:

5 “22A-5203. Blocking passage.

6 “(a) *Offense.* An actor commits blocking passage when the actor:

7 “(1) Knowingly blocks a:

8 “(A) Street, sidewalk, bridge, path, passageway, entrance or exit of any
9 public building or enclosure; or

10 “(B) The entrance or exit of any private building or enclosure, without the
11 consent of the owner of that building or enclosure or any other person authorized to consent to
12 such blocking; and

13 “(2) Continues or resumes the blocking after receiving a law enforcement
14 officer’s order that, in fact, is lawful, to stop.

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

17 “(c) *Penalties.* Blocking passage is a Class C misdemeanor.”.

18 (f) Section 22A-5104(f) is amended as follows:

19 (1) Paragraph (1) is amended by striking the phrase “Class 8” and inserting the
20 phrase “Class 7” in its place.

21 (2) Paragraph (2) is amended by striking the phrase “Class 9” and inserting the
22 phrase “Class 8 in its place.

23 (g) Section 22A-5107 is amended as follows:

1 (1) Subsection (b)(2) is amended to read as follows:

2 “(2) In addition:

3 “(A) Is a fugitive from justice;

4 “(B) Has a prior conviction for what is, in fact:

5 “(i) An offense punishable by imprisonment for a term exceeding
6 one year or a felony;

7 “(ii) An offense under this subchapter, an offense under the former
8 Chapter 45 of the former Title 22 of the District of Columbia Official Code, as such chapter and
9 title existed immediately prior to the applicability date of the Revised Criminal Code Act of
10 2022, if committed immediately prior to the applicability date of the Revised Criminal Code Act
11 of 2022, or a comparable offense, committed within 5 years of the current possession of a
12 firearm; or

13 “(iii) An intrafamily offense, as that term is defined in § 16-
14 1001(8), or a comparable offense, committed within 5 years of the current possession of a
15 firearm;

16 “(C) Is subject to a final civil protection order issued under § 16-1005 or a
17 final anti-stalking order issued under § 16-1064; or

18 “(D) Is subject to a court order that:

19 “(i)(I) Was issued after a hearing of which the actor received actual
20 notice, and at which the actor had an opportunity to participate; or

21 “(II) Remained in effect after the person failed to appear for
22 a hearing of which the actor received actual notice;

1 “(ii) Restrains the actor from assaulting harassing, stalking, or
2 threatening any other person, or requires the actor to stay away from, or have no contact with,
3 any other person or a location; and

4 “(iii) Requires the actor to relinquish possession of any firearms.”.

5 (2) Subsection (e) is amended as follows:

6 (A) Paragraph (1) is amended by striking the phrase “Class 8” and
7 inserting the phrase “Class 6” in its place.

8 (B) Paragraph (2) is amended by striking the phrase “Class 9” and
9 inserting the phrase “Class 7” in its place.

10 (h) Section 22A-2201(e) is amended as follows:

11 (1) Paragraph (1) is amended to read as follows:

12 “(1) First degree robbery is a Class 5 felony, but not withstanding § 22A-603, the
13 maximum term of imprisonment for first degree robbery is 20 years.”.

14 (2) Paragraph (2) is amended by striking the phrase “Class 8” and inserting the
15 phrase “Class 6” in its place.

16 (3) Paragraph (3) is amended by striking the phrase “Class 9” and inserting the
17 phrase “Class 7” in its place.

18 (4) Paragraph (4) is amended to read as follows:

19 “(4) *Penalty enhancement for first degree robbery.* The penalty classification for
20 first degree robbery shall be increased by two classes when the actor commits the offense:

21 “(A) Reckless as to the fact that the complainant is a protected person; or

22 “(B) By using or displaying what is, in fact, a dangerous weapon or
23 imitation dangerous weapon.”.

1 “(5) *Penalty enhancement for second degree robbery.* The penalty classification
2 of second degree robbery shall be increased by one class when the actor commits the offense:

3 “(A) Reckless as to the fact that the complainant is a protected person; or

4 “(B) By using or displaying what is, in fact, a dangerous weapon or
5 imitation dangerous weapon.

6 “(6) *Penalty enhancement for third degree robbery.* The penalty classification of
7 third degree robbery shall be increased by one class when the actor commits the offense:

8 “(A) Reckless as to the fact that the complainant is a protected person; or

9 “(B) By using or displaying what is, in fact, a dangerous weapon or
10 imitation dangerous weapon.

11 (i) Section 22A-2202(e) is amended as follows:

12 (1) Paragraph (1) is amended to read as follows:

13 “(1) First degree carjacking is a Class 5 felony, but notwithstanding § 22A-603,
14 the maximum term of imprisonment for first degree carjacking is 21 years.”

15 (2) Paragraph (2) is amended by striking the phrase “Class 7” and inserting the
16 phrase “Class 5” in its place.

17 (3) Paragraph (3) is amended by striking the phrase “Class 8” and inserting the
18 phrase “Class 6” in its place.

19 (4) Paragraph (4) is amended to read as follows:

20 “(4) *Penalty enhancements for carjacking.* The penalty classification for first
21 degree, second degree, or third degree carjacking shall be increased by two classes when the
22 actor commits the offense:

23 “(A) Reckless as to the fact that the complainant is a protected person; or

1 “(B) By using or displaying what is, in fact, a dangerous weapon or
2 imitation dangerous weapon.”.

3 (5) Paragraphs (5) and (6) are repealed.

4 (j) Section 202(a) is repealed.

5 (k) Section 205(b) is repealed.

6 (l) Section 501 is amended by striking the phrase “October 1, 2025” and inserting the
7 phrase “January 1, 2027” in its place.

8 Sec. 3. Fiscal impact statement.

9 The Council adopts the fiscal impact statement in the committee report as the fiscal
10 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
11 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

12 Sec. 4. Effective date.

13 This act shall take effect following approval by the Mayor (or in the event of veto by the
14 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
15 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
16 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
17 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

BRIAN L. SCHWALB
ATTORNEY GENERAL



PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Tommy Wells
Director
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: February 6, 2023

SUBJECT: Legal Sufficiency Certification – Draft “Revised Criminal Code Amendment Act of 2023”
(AE-23-160)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at (202) 724-5524.

A handwritten signature in black ink that reads "Megan D. Browder".

Megan D. Browder