



District of Columbia Sentencing and Criminal Code Revision Commission

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January 11, 2011

Hon. Vincent Gray
John A. Wilson Building
1350 Pennsylvania Avenue, NW Suite 316
Washington, DC 20004

Dear Mayor Vincent Gray:

The District of Columbia Sentencing and Criminal Code Revision Commission is pleased to transmit to you and to the Council a proposal to amend the sentencing laws of the District of Columbia so as to make criminal fines proportional. On October 19, 2010, the Commission voted to recommend adoption of the statute proposed in this letter, and approved the text of this letter, including recommendations for certain conforming amendments.¹

One of the Commission's specific statutory code reform obligations is to "[a]ssess whether criminal penalties (including fines) for felonies are proportionate to the seriousness of the offense, and, as necessary, revise the penalties so they are proportionate." D.C. Code § 3-101.01 (b)(3). The Commission's review of criminal fines in the District of Columbia disclosed a number of reasons for making changes and for making those changes in a comprehensive fashion, reaching not only felonies, but most misdemeanors as well. The statute that the Commission is proposing, which we have denominated "The Fine Proportionality Act of 2011" (hereinafter, "the Act"), would make fines for criminal offenses, with few exceptions, proportional to the

¹ Although Judge Frederick H. Weisberg serves as Chairman of the Commission, he and Judges Harold L. Cushenberry and J. Ramsey Johnson declined to vote on this legislative proposal so as to avoid any appearance of a conflict with their functions as Superior Court judges.

imprisonment term for each offense. Such proportionality of fine provisions does not now exist in our law.²

Background

Most criminal statutes in the District of Columbia identify the act(s) or omission(s) that are prohibited and specify that a person convicted may be sentenced to not more than a particular term of imprisonment, or not more than a particular fine, or both. Most of the remaining criminal statutes provide that a person convicted may be sentenced to not more than a particular term of imprisonment or not more than a particular fine. We do not have a system of classifying offenses and of fixing the penalties for violations depending upon those classifications. Instead, we have dozens of individual offenses with dozens of particularized, individual imprisonment and fine terms.

The absence of broad classifications and the proliferation of individual criminal provisions have resulted in considerable disproportionality over the years, especially as to fines. A useful way to gauge the proportionality of existing statutory fines is to examine the ratio of fine and imprisonment terms for each crime. Some examples are the following:

<u>Offense</u>	<u>Maximum Imprisonment</u>	<u>Fine</u>	<u>Ratio (\$/yr.)</u>
Animal Control Act Violations	10 days	\$300	10,950
False Report to the Police	30 days	\$300	3,650
Fire Code Violations	90 days	\$300	1,217
Second Degree Theft	180 days	\$1,000	2,030
Possessing Liquid PCP	3 years	\$3,000	1,000
Robbery (Attempt)	3 years	\$500	167
Assault with a Dangerous Weapon	5 years	none	0
Blackmail	5 years	\$1,000	200
First Degree Theft	10 years	\$5,000	500
Assault on Law Enforcement Officers	10 years	\$10,000	1,000
Extortion	10 years	\$10,000	1,000
Robbery	15 years	none	0
Sex Abuse in the Second Degree	20 years	\$200,000	10,000
Carjacking	21 years	\$5,000	239
Burglary I	30 years	none	0
Obstructing Justice	30 years	\$10,000	333
Drug Distribution (Schedule I and Schedule II Narcotics)	30 years	\$500,000	16,666
Kidnapping	30 years	none	0
Manslaughter	30 years	none	0
Murder I	life	none	0

² In contrast, the Voluntary Sentencing Guidelines promulgated by the Commission in 2004 brought proportionality to felony imprisonment terms imposed in Superior Court.

As illustrated above, some statutes have higher ratios and some have lower ratios. In addition, certain statutes have *very* high ratios of fines to imprisonment, while some have *no* fine provision at all. While any one of the fine provisions in the District's laws could surely be defended as appropriate,³ it is difficult to reconcile them taken as a whole based on a principle of proportionality. For example, should a person convicted of assaulting a law enforcement officer face less than one-half of the imprisonment but twice the fine of a carjacker? Why are the imprisonment terms for Carjacking and Second Degree Sex Abuse similar, while the fines differ by a factor of forty? What is the rationale behind Robbery having no fine while Attempted Robbery has a \$500 fine? Why are there no fines for Murder, Manslaughter, Kidnapping and Assault with a Dangerous Weapon?

Lack of proportionality is not the only problem with our fine structure. Many statutes have fine provisions that were set decades ago. For example, a maximum fine of \$1,000 many decades ago was effectively larger than the same maximum fine today. In effect, the mere passage of time has made some fine provisions considerably less severe than they were when enacted. The proposed statute generally increases the typical fine-to-imprisonment ratio to account for inflation.⁴

To the Commission's knowledge, there has been no systemic adjustment in criminal fines in the District of Columbia within memory.⁵ The proposed statute will bring uniformity to our system of fines.

Making Fines Proportional

One way to make fine and imprisonment terms proportional is to establish a single statute fixing penalties for all offenses, depending on their grade or classification. Such a system, of course, requires that offenses be graded or classified in some fashion. The Model Penal Code, for example, takes this approach to setting criminal penalties. Criminal offenses are classified as degrees of felonies, misdemeanors or violations. Section 6.03 of the Model Penal Code then fixes fines for each of these classification categories. This is the approach used in many states (e.g., Alabama (Ala. St. 13A-5-11, 12), Colorado (Colo. St. § 18-1.3-401 (1)(a)(III)(A)), Florida (Fla. St. § 775.083), Hawaii (Ha. R.S. 706-640), and Washington (Wash. St. 9A.20.021)). This approach is also used in the federal system. A single statute, 18 U.S. Code § 3571, enacted in 1984, generally fixes fines for any offense, depending on whether it is a felony, any of certain grades of misdemeanors, or an infraction.

³ For example, very large fines for drug dealing – a crime often motivated by a profit motive – are surely intended to deter such crimes and to deprive drug dealers of their ill-gotten gain. Forfeiture laws are also a means to deprive drug dealers of their profits. Forfeiture laws are unaffected by this proposal.

⁴ D.C. Code § 16-705 provides that a trial must be by a jury if the fine on a single count exceeds \$1,000 or if the aggregate of fines on all counts exceeds \$4,000. The proposed statute is designed with that provision in mind, so that the present rate at which jury trials occur will not change if it is enacted. Constitutionally, a so-called “petty offense” for which a jury trial is not mandated by the Sixth Amendment can have a maximum sentence up to six months and a maximum fine up to \$5000. *United States v. Nachtigal*, 507 U.S. 1, 5 (1993).

⁵ Title I of the Omnibus Criminal Justice Reform Amendment Act of 1994 (D.C. Law 10-151), captioned “Misdemeanor Streamlining,” which changed the imprisonment terms for many misdemeanors from one year to 180 days, increased some fines and decreased others. But most fines for misdemeanors were unchanged.

In brief, Section 3571 provides that:

- an individual who has violated a criminal statute may be fined the greater of
 - the amount specified in the statute, or
 - the amount specified in 3571, which depends on the classification of the offense, or
 - twice the pecuniary gain or loss occasioned by the offense,

and that:

- an organization that has violated a criminal statute may be fined the greater of
 - the amount specified in the statute, or
 - the amount specified in 3571, which depends on the classification of the offense, and which is twice that for individuals, or
 - four times the pecuniary gain or loss occasioned by the offense.

Finally, Section 3571 provides that a defendant may not be sentenced to a fine greater than that specified in a particular statute (if any) if that statute specifically exempts the offense from the application of Section 3571.

Even though District of Columbia law does not now have a comprehensive classification system for its offenses,⁶ after examining the District's fine structure, the Commission elected to use the federal statute, 18 U.S. Code § 3571, as a model for the Act now being proposed.⁷ The Act uses imprisonment maxima as a substitute for a classification system, and fixes fines across the board as to any offense for which there is a term of imprisonment.

The proposed Fine Proportionality Act of 2011 is set forth in Appendix A-1. Set forth here is a synopsis of the Act, including how it differs from Section 3571, and from current D.C. law:

- Subsection (a) specifies that the Act applies only to offenses punishable by imprisonment. It therefore has no application to an offense punishable by a fine only. Subsections (b) through (e) thus refer to "such an offense," meaning one punishable by a term of imprisonment.

⁶ District of Columbia law defines crimes of violence and dangerous crimes for various purposes, and Class A felonies for certain purposes. But there is no general scheme for classifying offenses, nor one that spells out penalties based upon those classifications.

The Commission has a statutory mandate to propose a classification scheme for misdemeanors (*see* D.C. Code § 3-101.01). The proposed statute brings proportionality to fine provisions for misdemeanors and felonies alike, without actually modifying any offense provisions.

⁷ The text of this federal statute, 18 U.S. Code § 3571 appears *infra* at Appendix B.

- The Act reaches only offenses codified in the D.C. Code, not those in the Code of Municipal Regulations.
- The Act says a person “may” be sentenced to pay a fine. This will not change current sentencing law in any way. One common type of criminal provision specifies prison and fine terms using some form of ‘and, or both.’ Another common type of provision specifies prison and fine terms using only “or.” Very few offenses provide for a prison term and some fine.⁸ Even if such a statute is understood to require imposition of both a fine and a prison term, which is less than clear,⁹ the fact is that a judge may suspend the execution of either one, unless the law does not allow it. See D.C. Code § 16-710 (authorizing, *inter alia*, probation and the imposition and suspension of the execution of sentences, in whole or in part). Under D.C. law, some *imprisonment* terms cannot be suspended because the law forbids it. See e.g., *Moorer v. United States*, 868 A.2d 137 (D.C. 2005);¹⁰ D.C. Code § 22-4502 (e)(2) (“The execution or imposition of any term of imprisonment imposed under paragraph (2) or (3) of subsection (a) of this section may not be suspended and probation may not be granted.”) But no fine provision in our law contains language expressly forbidding suspension of the execution of same, nor has any judicial decision concluded that any forbids it. Thus, a judge may now suspend the execution of a fine, even if s/he takes the view that a fine must be imposed. The Act does not alter any of this.
- The Act has repeated references to “the maximum amount specified in the law setting forth the penalty for the offense.” The underscored language does not appear in Section 3571. It is included in the Act simply because some District of Columbia statutes have penalty provisions separate from the provision describing the offense.
- Some D.C. offenses have minimum fines in addition to maximum fines.¹¹ The Act uses the language “the maximum amount specified in the law setting forth the penalty for the offense” (in subsections (b)(1) and (c)(1)) and “maximum fine” and “maximum amount” (in subsection (e)). The word “maximum” does not appear in Section 3571. The purpose of this provision in the Act is to make clear that the Act implicates the maximum fine that is otherwise applicable, not any minimum fine.

⁸ For example, two offenses in the Bail Reform Act (D.C. Code § 23-1327 (a)(1) and (2)) provide that one convicted shall be sentenced to not more than certain terms of imprisonment and fined not more than certain sums. Oddly, the third offense described in Section 1327 (a)(3) uses the word “or.”

⁹ On one view of the matter, a sentence of imprisonment only would comply with the terms of such a statute since that sentence is indeed the prison term and “not more than” the sum specified in the statute: no fine is arguably “not more than” the specified maximum fine.

¹⁰ “[T]he phrase [in the carjacking statute, D.C. Code § 22-2803 (c)] ‘Notwithstanding any other provision of law’ compels the conclusion that D.C. Code § 16-710 (2001), which is the only statute authorizing the Superior Court to place any convicted defendant on probation, cannot be applied in carjacking cases.” *Moorer v. United States*, 868 A.2d 137, 144 (D.C. 2005).

¹¹ E.g., Unauthorized Use of a Vehicle by certain recidivists (D.C. Code § 22-3215 (d)(3)(A)) (“shall be fined not less than \$5,000 nor more than \$15,000, or imprisoned . . . or both” (amended only last summer)) and Malicious Water Pollution (D.C. Code § 22-3318) (“shall be fined not less than \$500 nor more than \$1,000, or imprisoned . . .”) These minimum fines, like all others, can be suspended in whole or in part. See D.C. Code § 16-710.

- Section 3571 provides that individual and organizational defendants may be sentenced to a higher fine than that set forth in 3571 if the offense of conviction provides for a higher one. Subsection (c) of this Act serves the same function for organizational defendants. But subsection (b)(1) of this Act has a proviso for individuals: an individual may be sentenced to a higher fine than provided in the Act *only if* the offense of conviction specifically refers to that subsection and permits the higher fine. Thus, the very high fines now provided for by our drug and sex offense statutes, among others, would not apply to individuals sentenced under them unless those provisions were also amended to reference subsection (b)(1) of the Act, which the Commission is not recommending.
- Subsection (e) is the obverse of that proviso. It provides that unless a specific offense's penalty provision refers to this Act and makes it inapplicable, then the fine called for by this Act applies even if the offense of conviction currently has no fine or has a fine with a lower maximum than that set forth in the Act. This provision would have the following important consequences:
 - Every statute that now has an imprisonment term and no fine will have the fine set forth in this Act.
 - Every statute that now has an imprisonment term and a disproportionately low fine will have the higher and proportionate fine set forth in this Act.
 - Every new D.C. Code enactment or amendment with an imprisonment term will be subject to this provision, and so will have a proportionate fine, unless the enactment or amendment specifically provides otherwise.
- Subsection (c) of the Act doubles the otherwise applicable fines for offenses with a term of incarceration of six months or more if the defendant is an organization.
- Subsection (d) permits an alternative fine up to twice the pecuniary gain or loss, if it is larger than the fine for which the Act otherwise provides. As explained more fully below, only a handful of District of Columbia statutes now have such a provision: Bribery of a Public Servant, Trademark Counterfeiting (some second and subsequent offenses), Fraud in the First and Second Degrees, Identity Theft in the First Degree, and Evading Taxes and Failing to Pay or Collect Tax. These all now have fixed fines and an alternative maximum equal to three times the value of the property in question. The Commission recommends that these alternative fine provisions be modified if the proposed statute is enacted. Conforming amendments to accomplish that and a discussion of them appear below.
- Subsection (d)(2) is added to make clear that a defendant may be sentenced to twice the gain or loss, but only up to the amount that is both alleged and proved. While this provision may be surplusage in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), its inclusion may nonetheless forestall litigation.
- Subsection (f) is added so that the Act conforms to D.C. Code § 1-206 (a) which provides, "The Council shall have no authority . . . to: . . . (4) Enact any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts)"

Non-Retroactivity

The Commission recommends that the Act and conforming amendments apply only to offenses committed on or after the effective date of the legislation. Thus, language such as the following should be included:

This act shall take effect and shall apply only to offenses committed on or after a 60-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C.Code § 1-233(c)(2)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

Conforming Amendments

Exemptions to Retain Large Fines for Certain Offenses

There are six criminal statutes that the Commission proposes should retain large fines for individuals. These are statutes that appear to be calculated primarily to exact substantial costs on running a business in violation of them. Thus, the relatively small imprisonment term for these offenses is not a fair gauge of what the fine ought to be. To put it differently, the Commission suggests that reducing those fines would compromise the deterrent value of the statutes and would permit *individuals* to operate businesses in violation of those laws with relative impunity.

This concern does not apply to a prospective organizational defendant: for such a defendant, the Act does not reduce a fine in a specific statute that is higher than those found in the Act. But for a business that is not organized as a corporation or otherwise, and is simply operated by an individual, this concern is warranted. The statutes in question that should retain their large fines are the following:

- False Representation (D.C. Code § 2-308.21). This offense is now punishable by up to one year and \$100,000.
- Employment of Minors (D.C. Code § 32-213 (b)). The first offense is now punishable by 10 to 30 days and/or \$1,000 to \$3,000, and subsequent offenses by 30 to 90 days and \$3,000 to \$5,000.
- Minimum Wage Laws (D.C. Code § 32-1011 (a)). The maximum penalty for this offense is now 6 months (for second and subsequent offenses) and/or \$10,000 (for any offense). Section 1011 (a) fixes penalties for violations of Section 1010 which in turn makes it an offense to violate any provision of Subchapter I of Chapter 10, dealing with payment of minimum wages, or any regulation issued under that Subchapter.

- Failure to Pay Wages (D.C. Code § 32-1307 (a)). The first offense is now punishable by up to 30 days and/or \$300, and subsequent offenses by 90 days and/or \$1,000. This section fixes penalties for failure to pay wages as required and for failure comply with any other provision of Chapter 13 (“Payment and Collection of Wages”).
- Licensure of Certain Occupations and Professions (D.C. Code § 47-2853.27). This offense is now punishable by a maximum of one year and/or \$10,000 for a first offense, and by one year and/or \$25,000 for a second or subsequent offense. This section makes it an offense to violate any provision of Subchapter I-B (“Non-Health Related Occupations and Professions Licensure”), including practicing certain occupations and professions without a license (Section 2853.02), and falsely holding oneself out as authorized to do so (Section 2853.26).
- Motor Vehicle Registration (D.C. Code § 50-1501.04 (b)(1)). This offense is now punishable by up to 30 days and/or \$1,000. This section fixes penalties for any violation of Subchapter I of Chapter 30, dealing with Motor Vehicle Registration, or any regulation issued under that Subchapter.

The Commission recommends amending these statutes as set forth in Appendix A-2 so as to exempt them from the operation of this Act.

Twice the Gain or Loss

Like its federal counterpart, the proposed Act permits the court to fine a defendant a sum in excess of that otherwise provided if twice the gain or loss is greater. District of Columbia law has only a handful of offenses with such a feature. These provisions are: Bribery of a Public Servant (D.C. Code § 22-712), Trademark Counterfeiting (some second and subsequent offenses) (D.C. Code § 22-902 (b)(2), (3)),¹² Fraud in the First and Second Degrees (D.C. Code §§ 22-3221 (a), (b), 22-3222 (a), (b)(1)), Identity Theft in the First Degree (D.C. Code § 22-3227.02), and Evading Taxes and Failing to Pay or Collect Taxes (D.C. Code §§ 47-4101, -4102). These all now have fixed maximum fines and an alternative maximum equal to three times the value of the property in question.

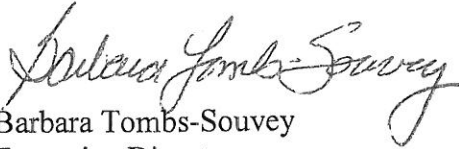
The Commission recommends that those provisions be modified. As is true of most other fine provisions that are atypical, these can surely be explained as sound deterrents and as means to take back ill-gotten gain. Yet, in context, they are difficult to reconcile with other statutes that do not now have like provisions. On balance, the Commission suggests that a uniform approach to gains and losses should be adopted for all statutes, and that doubling the gain or loss will provide more than adequate discretion to a sentencing judge. Accordingly, the Commission recommends that these statutes be amended as shown in Appendix A-3.

¹² This statute also provides that the *minimum* fine shall be three times the retail value of the property in question.

Impact on Correctional and Supervised Offender Population

D.C. Code § 3-106 requires that a Commission recommendation to the Council involving the enactment of a statute such as the one we now propose “be accompanied by an assessment of the impact, if any, on the size of the District's correctional and supervised offender population resulting from such change.” It is the Commission’s judgment that the proposed statute and conforming amendments would have no such impact.

Sincerely,

A handwritten signature in cursive script, reading "Barbara Tombs-Souvey".

Barbara Tombs-Souvey
Executive Director

APPENDICES

Appendix A-1 Proposed Fine Proportionality Act of 2011

Appendix A-2 Conforming Amendments – Exemptions to Retain Large Fines for Certain Offenses

Appendix A-3 Conforming Amendments – Twice the Gain or Loss

Appendix B 18 U.S.C. § 3571

APPENDIX A-1

PROPOSED FINE PROPORTIONALITY ACT OF 2011

- (a) **In general.** A defendant who has been found guilty of an offense under the District of Columbia Code punishable by imprisonment may be sentenced to pay a fine as provided in this section.
- (b) **Fines for individuals.** Except as provided in subsection (e) of this section, an individual who has been found guilty of such an offense may be fined not more than the greatest of —
- (1) the maximum amount specified in the law setting forth the penalty for the offense if it specifies a fine that is higher than the fine otherwise applicable under this section, but only if such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section;
 - (2) \$100 if the offense is punishable by imprisonment for 10 days or less;
 - (3) \$250 if the offense is punishable by imprisonment for 30 days or less but more than 10 days;
 - (4) \$500 if the offense is punishable by imprisonment for 90 days or less but more than 30 days;
 - (5) \$1,000 if the offense is punishable by imprisonment for 6 months or less but more than 90 days;
 - (6) \$2,500 if the offense is punishable by imprisonment for 1 year or less but more than 6 months;
 - (7) \$12,500 if the offense is punishable by imprisonment for 5 years or less but more than 1 year;
 - (8) \$25,000 if the offense is punishable by imprisonment for 10 years or less but more than 5 years;
 - (9) \$37,500 if the offense is punishable by imprisonment for 15 years or less but more than 10 years;
 - (10) \$50,000 if the offense is punishable by imprisonment for 20 years or less but more than 15 years;
 - (11) \$75,000 if the offense is punishable by imprisonment for 30 years or less but more than 20 years;
 - (12) \$125,000 if the offense is punishable by imprisonment for more than 30 years;
 - (13) \$250,000 if the offense is a Class A felony and it resulted in death; or
 - (14) the applicable amount under subsection (d) of this section.
- (c) **Fines for organizations.** Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense punishable by imprisonment for six months or more may be fined not more than the greatest of—
- (1) twice the maximum amount specified in the law setting forth the penalty for the offense;
 - (2) twice the applicable amount under subsection (d) of this section; or
 - (3) twice the applicable amount under subsection (b) of this section.

(d) **Alternative fine based on gain or loss.**

- (1) **In general.** If any person derives pecuniary gain from such an offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.
- (2) **Procedure.** The Court may impose a fine under this subsection in excess of the fine provided for by subsection (b)(1) through (13) only to the extent that the pecuniary gain or loss is both alleged in the indictment or information and is proven beyond a reasonable doubt.

(e) **Special rule for lower fine specified in substantive provision.** If a law setting forth the penalty for such an offense specifies no fine or a maximum fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the maximum amount specified in the law setting forth the penalty for the offense.

(f) **Limitation.** This section shall not apply to any provision of Title 11, District of Columbia Code.

APPENDIX A-2

CONFORMING AMENDMENTS – EXEMPTIONS TO RETAIN LARGE FINES FOR CERTAIN OFFENSES

The Commission recommends that the following statutes be amended as indicated if the Fine Proportionality Act of 2011 is enacted.

§ 2-308.21. Penalties for false representations.

Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than \$100,000 for each violation of this chapter. The fine set forth in this section shall not be limited by Subsection (b) of the Fine Proportionality Act of 2011. The Corporation Counsel shall prosecute violations of this section.

§ 32-213. Penalties.

(a) A person commits an offense under this subchapter if that person:

(1) Employs a minor or permits a minor to work in violation of this subchapter, of any regulation promulgated by the Board of Education pursuant to § 32-224, or of any order issued under the provisions of § 32-203; or

(2) Interferes with the Board of Education, its officers or agents, or any other person authorized by the District to inspect places of employment of minors.

(b) A person convicted of a 1st offense under this section shall be fined not less than \$1,000 nor more than \$3,000, or imprisoned not less than 10 days nor more than 30 days, or both. A person convicted of a 2nd or subsequent offense under this section shall be fined not less than \$3,000 nor more than \$5,000, or imprisoned not less than 30 days nor more than 90 days, or both. The fines set forth in this subsection shall not be limited by Subsection (b) of the Fine Proportionality Act of 2011. Each day during which a violation of this subchapter occurs shall constitute a separate offense.

§ 32-1011. Penalties; prosecution.

(a) Any person who willfully violates any of the provisions of § 32-1010 shall, upon conviction, be subject to a fine of not more than \$10,000, or to imprisonment of not more than 6 months, or both. The fine set forth in this subsection shall not be limited by Subsection (b) of the Fine Proportionality Act of 2011.

(b) No person shall be imprisoned under this section except for an offense committed after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia.

(d) In addition to and apart from the penalties or remedies provided for in this section or § 32-1012, the Mayor shall assess and collect administrative penalties up to a maximum of \$300 for the first violation and up to a maximum of \$500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this subchapter.

(e) No administrative penalty shall be collected unless the Mayor provides any person alleged to have violated a provision of § 32-1010 notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If an informal hearing is requested, the Mayor shall issue a final order following the hearing containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

§ 32-1307. Penalties.

(a) Any employer who, having the ability to pay, willfully violates any provisions of § 32-1302 or § 32-1304 or who fails to comply with any other provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the 1st offense be punished by a fine of not more than \$300, or by imprisonment of not more than 30 days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than \$1,000 or by imprisonment of not more than 90 days, or in the discretion of the court, by both such fine and imprisonment. The fines set forth in this subsection shall not be limited by Subsection (b) of the Fine Proportionality Act of 2011.

(b) In addition to and apart from any other penalties or remedies provided for in this chapter, the Mayor shall assess and collect administrative penalties up to a maximum of \$300 for the first violation and up to a maximum of \$500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this chapter.

(c) No administrative penalty may be collected unless the Mayor provides any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If a formal hearing is requested, the Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If an informal hearing is

not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

§ 47-2853.27. Fines and penalties; criminal violations.

(a) Any person who violates any provision of this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year, a fine not to exceed \$10,000, or both.

(b) Any person who has been previously convicted under this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year, a fine not to exceed \$25,000, or both.

(c) The fines set forth in this section shall not be limited by Subsection (b) of the Fine Proportionality Act of 2011.

§ 50-1501.04. Unlawful acts; penalty

(a) It shall be unlawful:

(1) For any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of § 50-1401.02):

(A) If such motor vehicle or trailer is not registered or covered by a dealer's registration or by a special use certificate as required by this subchapter;

(B) If such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor;

(C) If such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor; or

(D) If, in the case of a charter bus, the motor vehicle is not registered or displaying a trip permit as required by § 50-1501.02(j);

(2) For the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1) of this subsection;

(3) To use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application; or

(4) For the owner of any motor vehicle to knowingly use or permit the use of any motor vehicle with a counterfeit, stolen, or otherwise fraudulent temporary identification tag.

(b)(1) Any person violating any provision of this subchapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$1000 or imprisonment of not more than 30 days, or both such fine and imprisonment. The fine set forth in this subsection shall not be limited by Subsection (b) of the Fine Proportionality Act of 2011. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(2) A motor vehicle being used in violation of subsection (a)(4) of this section shall be subject to seizure by the Mayor or any law enforcement officer of the District and to forfeiture to the District in accordance with to 6A DCMR §§ 805-810; such seizure and forfeiture may be in addition to the imposition of a fine or imprisonment as provided for in paragraph (1) of this subsection.

APPENDIX A-3

CONFORMING AMENDMENTS – TWICE THE GAIN OR LOSS

The Commission recommends that the following statutes be amended as indicated if the Fine Proportionality Act of 2011 is enacted.

§ 22-712. Prohibited acts; penalty.

(a) A person commits the offense of bribery if that person:

(1) Corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(2) Corruptly solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant;

in return for an agreement or understanding that an official act of the public servant will be influenced thereby or that the public servant will violate an official duty, or that the public servant will commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.

(b) Nothing in this section shall be construed as prohibiting concurrence in official action in the course of legitimate compromise between public servants.

(c) Any person convicted of bribery shall be fined not more than \$25,000 or ~~3-times~~ twice the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than 10 years, or both.

§ 22-902. Trademark counterfeiting.

(a) A person commits the offense of counterfeiting if such person willfully manufactures, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any items, or services bearing or identified by a counterfeit mark. There shall be a rebuttable presumption that a person having possession, custody, or control of more than 15 items bearing a counterfeit mark possesses said items with the intent to sell or distribute.

(b) A person convicted of counterfeiting shall be subject to the following penalties:

(1) For the first conviction, except as provided in paragraphs (2) and (3) of this subsection, by a fine not exceeding \$1,000 or by imprisonment for not more than 180 days, or both;

(2) For the second conviction, or if convicted under this section of an offense involving more than 100 but fewer than 1,000 items, or involving items with a total retail value greater than \$1,000 but less than \$10,000, by a fine not exceeding \$3,000 or ~~3-times~~ twice

the retail value of the items bearing, or services identified by, a counterfeit mark, whichever is greater, or by imprisonment for not more than 3 years, or both; and
(3) For the third or subsequent conviction, or if convicted under this section of an offense involving the manufacture or production of items bearing counterfeit marks involving 1,000 or more items, or involving items with a total retail value of \$10,000 or greater, by a fine not exceeding \$10,000 or ~~3-times~~ twice the retail value of the items bearing, or services identified by, a counterfeit mark, whichever is greater, or by imprisonment for not more than 10 years, or both.

(c) For the purposes of this chapter, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, advertises, distributes, offers for sale, sells, or possesses.

(d) The fines provided in subsection (b) of this section shall be no less than ~~3-times~~ twice the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

(e) Any items bearing a counterfeit mark and all personal property, including, but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this chapter shall be seized by any law enforcement officer, including any designated civilian employee of the Metropolitan Police Department, in accordance with the procedures established by § 48-905.02.

(1) All seized personal property shall be forfeited.

(2) Upon the request of the owner of the intellectual property, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition.

(3) If the owner of the intellectual property does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the owner of the intellectual property consents to another disposition.

(f) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(g) The remedies provided for herein shall be cumulative to the other civil and criminal remedies provided by law.

§ 22-3222. Penalties for fraud.

(a) Fraud in the first degree. —

(1) Any person convicted of fraud in the first degree shall be fined not more than \$5,000 or ~~3-times~~ twice the value of the property obtained or lost, whichever is greater, or

imprisoned for not more than 10 years, or both, if the value of the property obtained or lost is \$250 or more; and

(2) Any person convicted of fraud in the first degree shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both, if the value of the property obtained or lost was less than \$250.

(b) Fraud in the second degree. –

(1) Any person convicted of fraud in the second degree shall be fined not more than \$3,000 or ~~3-times~~ twice the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than 3 years, or both, if the value of the property which was the object of the scheme or systematic course of conduct was \$250 or more; and

(2) Any person convicted of fraud in the second degree shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both, if the value of the property which was the object of the scheme or systematic course of conduct was less than \$250.

§ 22-3227.03. Penalties for identity theft.

(a) Identity theft in the first degree. -- Any person convicted of identity theft shall be fined not more than (1) \$10,000, (2) ~~3-times~~ twice the value of the property obtained or (3) ~~3-times~~ twice the amount of the financial injury, whichever is greatest, or imprisoned for not more than 10 years, or both, if the property obtained, or attempted to be obtained, or the amount of the financial injury is \$1,000 or more.

(b) Identity theft in the second degree. -- Any person convicted of identity theft shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both, if the value of the property obtained, or attempted to be obtained, or the amount of the financial injury, has some value, or if 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.

(c) Enhanced penalty. -- Any person who commits the offense of identity theft against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 1 1/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both. It is an affirmative defense that the accused:

(1) Reasonably believed that the victim was not 65 years of age or older at the time of the offense; or

(2) Could not have determined the age of the victim because of the manner in which the offense was committed.

§ 47-4101. Attempt to evade or defeat tax.

(a) A person who willfully attempts in any manner to evade or defeat a tax, or the payment thereof, imposed by this title shall, in addition to other penalties provided by law, be guilty of a felony if the tax evaded or attempted to be evaded exceeds \$10,000, and, upon conviction thereof, shall be fined not more than \$10,000 or ~~3-times~~ twice the amount of the tax evaded or attempted to be evaded, whichever is greater, or imprisoned not more than 10 years, or both, together with the costs of prosecution.

(b) A person who willfully attempts in any manner to evade or defeat a tax, or the payment thereof, imposed by this title shall, in addition to other penalties provided by law, be guilty of a misdemeanor if the tax evaded or attempted to be evaded is \$10,000 or less, and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 180 days, or both, together with costs of prosecution. All prosecutions under this subsection shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District. The amount of any taxes that were evaded or attempted to be evaded pursuant to a single scheme or systematic course of conduct in violation of this section may be aggregated to determine the grade of the offense and the sentence for the offense.

§ 47-4102. Failure to collect or pay over tax.

(a) A person required under this title to collect, account for, or pay over tax imposed by this title who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a felony if the amount to be collected or accounted for and paid over exceeds \$10,000, and, upon conviction thereof, shall be fined not more than \$10,000 or ~~3-times~~ twice the amount of the tax evaded or attempted to be evaded, whichever is greater, or imprisoned not more than 10 years, or both, together with the costs of prosecution.

(b) A person required under this title to collect or account for and pay over a tax imposed by this title who fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a misdemeanor if the amount to be collected or accounted for and paid over is \$10,000 or less, and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 180 days, or both, together with costs of prosecution. All prosecutions under this subsection shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District. The amount of any taxes that were not collected, truthfully accounted for, or paid over under a single scheme or systematic course of conduct in violation of this section may be aggregated in determining the grade of the offense and the sentence for the offense.

APPENDIX B

18 U.S.C. 3571

§ 3571. Sentence of fine

(a) In general.--A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Fines for individuals.--Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of--

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

(c) Fines for organizations.--Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of--

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000;
and
- (7) for an infraction, not more than \$10,000.

(d) **Alternative fine based on gain or loss.**--If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) **Special rule for lower fine specified in substantive provision.**--If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.