I. BACKGROUND AND NEED

INTRODUCTION

Bill 18-963, the “Criminal Code Amendment Act of 2010,” amends 16 different laws or sections of the D.C. Code with regard to gun control, law enforcement, and criminal penalties. The Committee Print does not include the very controversial sections of the bill as introduced, but does include provisions that have been considered previously as parts of other bills – such as restitution (Bill 18-595), animal cruelty as a component of domestic violence (Bill 17-89), and asbestos liability (Bill 18-1031). Highlights of the Committee Print, demonstrating the range of issues, are:

- The amended bill would revise several aspects of the District’s firearms registration law, including: (1) establishing that the penalty is solely civil for failure of a registrant to
notify the Chief of Police of changes in material information regarding his or her registration; (2) delaying by two years the requirement for microstamping of pistols; and (3) making permanent that the gun offender registry is a requirement for anyone convicted and less than two years beyond his or her release date – regardless of when the conviction occurred.

- The amended bill would make permanent a clarification that the statute of limitations in asbestos injury cases is the later of either 3 years or 1 year after disability or death.

- The amended bill would establish that a judgment of restitution or reparation is enforceable in the same manner as a civil judgment, and may be enforced by the United States Attorney, the DC Attorney General, as well as the victim and other beneficiaries.

- The amended bill restores language regarding animal cruelty in intrafamily offenses that the Council had adopted as part of Bill 17-89 (D.C. Law 17-281).

- The amended bill removes an obstacle to MPD litter enforcement, by permitting the Office of Administrative Hearings to adjudicate litter tickets issued to juveniles without maintaining confidentiality.

- The amended bill expands the misdemeanor prohibition for tampering with a GPS bracelet or electronic monitoring device, to include radio frequency identification systems, and to include incarcerated persons (currently the law applies to pretrial, probation, and parole offenders only).

- The amended bill updates the law, by increasing the threshold to $1,000, in determining the seriousness of an offense when measured by the monetary value of the property at issue: destruction of property, fraud, insurance fraud, receiving stolen property, altering motor vehicle identification numbers, and forgery. The wiretap statute is also updated to conform to the same dollar threshold.

- The amended bill expands the penalty for escape to include juveniles escaping from a Department of Youth Rehabilitation Services institution or facility.

- The amended bill criminalizes the act of arranging a sexual act or contact with a real or fictitious child. The reference to fictitious child arises from circumstances where law enforcement identifies perpetrators through internet communication.

- The amended bill authorizes warrantless arrest for misdemeanor sexual abuse (adult or child) to enable immediate arrest when a police officer did not witness the abuse but has probable cause.

- The amended bill requires gun offender registry for any youth whose conviction for a gun offense was set aside under the Youth Rehabilitation Act.
Bill 18-963 provides a piece of the overall strategy to reduce crime. The most important steps within law enforcement that will reduce crime are: first, close cases with arrests; second, vigorously prosecute offenders; and third, focus on reducing recidivism once offenders are convicted.

**Tampering with a Detection Device**

The Council approved D.C. Official Code § 22-1211 on an emergency basis December 16, 2008 and temporary legislation was enacted on January 28, 2009. The permanent legislation was enacted on December 10, 2009. Advances in technology have permitted increased use of global positioning systems as well as electronic and radio frequency systems. These monitoring systems serve as a deterrent for monitored persons to commit new crimes, thereby protecting public safety without the necessity of incarceration. Further, GPS devices can be utilized to identify probable suspects by matching their whereabouts to the scene of the crime.

The Department of Corrections is currently using radio frequency identification (“RFID”) technology to manage and monitor inmates in the jail. The Department is experiencing problems with inmates intentionally tampering or removing the RFID devices – this is the same problem that the Pretrial Services Agency and the Court Services and Offender Supervision Agency encountered with persons on supervision that led to the enactment of the 2008 emergency legislation. Tampering with these devices defeats their purpose and makes management of the jail more difficult. Bill 18-963 adds incarcerated individuals to the list of person covered by the law, and adds RFID technology to the type of monitoring equipment to be protected from tampering.

The Committee recommends adoption of this subsection.

**Contraband in Secured Facilities**

In 2009, the Committee learned that there were problems in maintaining order and safety at the D.C. jail due to advances in communications technology. Mobile, or cellular, telephones are the most prevalent and problematic of this new technology. While other contraband items are seized more often, cell phones have become very valuable. They can be used as a type of underground currency for prisoners. In many instances, inmates use cell phones to circumvent the rules and keep in touch with family members and friends. More nefarious, some prisoners use cell phones to orchestrate crimes, intimidate witnesses, run gangs, or organize escapes. D.C. Law 18-83 amended the contraband law to include cell phones and other mobile communication devices as contraband within a correctional/secure facility.

Bill 18-963, as introduced, would adopt a different orientation to the contraband law. Rather than focus on order and security in a secure facility such as the jail, it would focus on

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1 The Emergency was Bill 17-1071 (D.C. Act 17-650), and the Temporary Bill (17-1072) became D.C. Law 17-391 on June 3, 2009. The permanent was section 103 of the Omnibus Public Safety and Justice Amendment Act of 2009, D.C. Law 18-88.
criminalizing the possession of certain items anyone, anywhere in custody. It would expand the reach of the law to everyone in holding cells, police stations, courthouses, halfway houses, and even vehicles used for the transportation of persons in custody. This would not only apply to persons actually convicted of a crime and being transported to court for a hearing on another matter, but also include a person who was taken off the street and is being transported to the police station for booking. The Committee Print rejects this reorientation of the contraband law.

The drafting of the contraband law is challenging in that it criminalizes the possession of items that are lawfully possessed in society. Items such as mobile phones are not illegal. What is illegal from a public policy perspective is the “where” – that having a mobile phone in jail should be illegal. This creates a gray area: where, in the custody process, should one be punished for possessing something that is otherwise legal.

At the time a person is arrested, he or she probably does not have a reasonable expectation that some of the items he or she lawfully possesses are now considered contraband. At some point he or she begins to get notice that some of the possessions must be turned over. The deeper into the system (from squad car to police district, then to central cell block or a courthouse holding cell, and finally to the jail), the clearer the notice. Similarly, the deeper into the system, the more thorough the search. By the time a person goes into a secure facility (e.g., the jail), he or she has been searched several times and probably even strip searched. However, in other custodial settings, lesser efforts have been made to detect and remove contraband. This suggests that contraband law is best focused on the secure end of the system.

The contraband law is also most needed, from a security perspective, in the secure detention facility. The prohibition of otherwise lawful items is critical to maintaining order and security among hundreds of people incarcerated, in one place, for weeks and months, and with idle hours to make mischief with, say, a mobile telephone.

Thus, the Committee Print maintains the focus of the contraband law on penal institutions and secure juvenile residential facilities. It would amend the contraband statute to revise the definition of cellular telephone to include accessories or devices that would enable or facilitate the use of a mobile telephone or other portable communication device. It is difficult to be exhaustive in light of changing technology, but accessories include chargers and batteries. The revised definition will further assist authorities in helping to maintain order and security.

The Committee recommends adoption of this subsection with amendments.

**Gun Offender Registry**

D.C. Code § 7-2508.01 et seq. was enacted on December 10, 2009 (D.C. Law 18-88). This provision enabled the supervision of convicted gun offenders once they are released back into the community by establishing a gun offender registry. Convicted gun offenders, as defined in the law, are required to register with the Metropolitan Police Department (“MPD”) on an annual basis for two years following their release from prison, parole, or probation. It operates as an affirmative requirement for the gun offender and punishes violators with criminal penalties.
should they fail to comply. This legislation also enables MPD to monitor gun offenders at a time when they are most likely to recidivate (i.e., following release from imprisonment or termination of supervised release).

According to the MPD, it has received 411 gun offender notices from Superior Court. Of these:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offenders Currently Incarcerated</td>
<td>238</td>
</tr>
<tr>
<td>Offenders Currently in the Community</td>
<td>105</td>
</tr>
<tr>
<td>Offenders Residing Outside of the District</td>
<td>60</td>
</tr>
<tr>
<td>Offenders Pending Registration</td>
<td>1</td>
</tr>
<tr>
<td>Offenders Removed From the List</td>
<td>6</td>
</tr>
<tr>
<td>Offenders Deported</td>
<td>1</td>
</tr>
</tbody>
</table>

It is the intent of the Committee to make the registry applicable to any gun offender who is within the registration period required by the statute and who has been ordered by the court to register, regardless of whether the crime or conviction occurred before or after the effective date of the statute. The Gun Offender Registration Emergency Amendment Act of 2010 (D.C. Act 18-464, effective August 6, 2010) made it clear that the Gun Offender registry applies retroactively to any gun offender who otherwise qualifies. Bill 18-963 would make the retroactivity provision permanent in the law.

Currently, the gun offender registry also requires registration within 48 hours of receiving notice to register. Concern has been raised that gun offenders might be in violation of the Act if they are required to register within 48 hours are unable to do so because the registry was not open during the 48 hours – specifically on weekends, legal holidays and days when the District government is closed. Bill 18-963 clarifies the 48 hour provision to exclude weekends, holidays, and days in which the government is closed.

The Committee recommends adoption of this subsection with amendments.

**Theft**

In 2009, the Council changed the penalties for a number of offenses (theft, credit card fraud, identity theft) so that the dividing line between a felony and a misdemeanor is $1,000 instead of $200 or $250. Bill 18-963 would amend the D.C. Official Code to apply the same dividing line to other offenses: destruction of property, fraud, insurance fraud, receiving stolen property, altering vehicle identification numbers, and forgery. The Bill would also amend the wiretap statute to change the dollar amounts to match the dollar amounts of the substantive offenses.

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The Committee recommends adoption of these subsections.

**FIREARM POSSESSION**

D.C. Official Code § 22-4503(a)(5)(c) makes it illegal for an individual to possess a firearm after he/she has been ordered by a court to relinquish it. Orders such as these are most often in domestic violence cases in which one party seeks a civil protection order. As currently written, the statute is limited to orders issued by a court in the District of Columbia. Orders issued in any other jurisdiction would not count. Bill 18-963 would amend this provision to make it illegal to possess a firearm regardless of the jurisdiction in which the order is issued.

The Committee recommends adoption of this subsection.

**PROBABLE CAUSE MISDEMEANORS**

This provision would amend D.C. Official Code § 23-581 to add misdemeanor sexual abuse and misdemeanor sexual abuse of a child or minor to the list of misdemeanors not committed in an officer’s presence that do not require a warrant prior to making an arrest. Current law permits warrantless arrests for voyeurism and misdemeanor assault; misdemeanor sexual abuse is at least as serious. More importantly, misdemeanor sexual abuse often involves persons known to each other, but is never actually committed in an officer’s presence, and an immediate arrest (based on probable cause) may be necessary to protect the victim from further harm.

There was no testimony in opposition this provision. The Committee recommends adoption of this subsection.

**ARRANGING FOR A SEXUAL ACT OR CONTACT WITH A REAL OR FICTITIOUS CHILD**

In 2006, the Council amended the sex offense statutes to account for individuals who entice or seduce a person they believe to be a minor to engage in a sexual act or contact. An undercover officer, working with the District of Columbia MPD/FBI Child Exploitation Task Force, pretends to be a teenager responding to overtures from an adult whom he/she met on the internet. The offender then arranges to meet the purported minor for a sexual encounter where officers from the Metropolitan Police Department make the arrest.

However, prepubescent children (toddlers and elementary school aged) often do not have access to the internet or could not on their own realistically agree to a sexual act or contact. In situations like this, pedophiles troll the internet for a parent or other adult who is willing to make the child available for sexual purposes. In some cases, a pedophile offers his/her own child for a sexual encounter with another adult. Although most cases involve arrangements for encounters with young children, at times a parent, guardian, or other adult will make a teenager available for a sexual act or contact.
Bill 18-963 would add a new section to the D.C. Official Code (probably § 22-3010.02) to make it illegal for an individual to make an arrangement for a sexual act or contact with a real or fictitious child. The introduced version of the bill would have made it illegal also to offer or accept an offer to have sexual contact with a child. There were concerns with these terms. “[T]here is a difference between ‘arranging,’ which implies some measure of control of the situation, ‘offering,’ which may imply less control but nonetheless demonstrates some initiative, and ‘accepting,’ which might be the result of negotiations, but which also might be a casual matter.” Therefore, the Committee Print limits the conduct to “arranging” to engage in a sexual act or sexual contact with the child. This will eliminate casual offers and acceptance which come to nothing, but still give leeway to reach the predator who malevolently stalks and grooms the innocent child to participate in this conduct, and to reach the individuals who negotiate away their protection of the child.

Included within this offense is a “fictitious” child. The intent is to facilitate the prosecution of predatory pedophiles who use the Internet or other communications media. It is not uncommon to read media reports of carefully controlled sting operations conducted by law enforcement, in which a pedophile arranges for sexual contact involving a child, but the “child” is actually a representation made by a law enforcement officer. The bill as introduced, however, could enable mischief, such as blackmail, between adults where they are acting out fantasies with no real child involved or intended to be involved (“the thrill such as it is, being in the salacious banter”). Thus, the Committee Print includes language to narrow the applicability of arranging sex with a fictitious child to law enforcement operations.

The Committee recommends adoption of this subsection with amendments.

**YOUTH ACT SET ASIDE CONVICTIONS**

D.C. Official Code amends § 24-901 et seq. (“Youth Act”) which permits juveniles sentenced under the Youth Act to earn a set aside for certain convictions. A set aside makes the conviction, but not the fact of the arrest, a legal nullity. It gives a juvenile who has successfully rehabilitated the right to lawfully state on an application for school or employment that he/she has not been convicted of a crime. A set aside does not seal or otherwise expunge an arrest record. In order to be eligible for a Youth Act sentence, a person must be less than 22 years of age at the time he/she is convicted. A conviction of any offense is eligible, except a conviction of murder. Although this means that serious and dangerous crimes are eligible for Youth Act sentences, in practice, the more serious the offense, the less likely the defendant will be able to earn a set aside.

The Youth Act contains a provision that lists a number of uses to which a set aside can be used such as: in determining an appropriate sentence if the person is subsequently convicted of another crime; and for sex offender registration and notification. Bill 18-963 amends D.C. Code

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4 Id. at 6.
§ 24-906 to expand the list to permit the use of a set aside conviction for the purposes of gun offender registration and to determine whether the individual has previously possessed a firearm as the predicate felony for a charge of possession of a firearm by a convicted felon.\(^5\)

As previously stated, the Youth Act allows a successfully rehabilitated individual to start anew without the stigma of a conviction. However, D.C. Code § 24-906(f)(1) already allows a set aside conviction to be used to “determin[e] whether a person has committed a second or subsequent offense for purposes of imposing an enhanced sentence under any provision of law[].” It would therefore be consistent that the set aside conviction may be used as the predicate for a possession of a firearm by a convicted felon charge.

The Public Defender Service (“PDS”) raised concern as to the retroactivity of the gun offender registration requirement (Section 17 of the Print) and the lack of notice to offenders who previously had pled guilty to a gun offense under the Youth Act. The benefit bestowed by a Youth Act sentence – which is an incentive for an offender to plead guilty – may be lessened for some by the new requirement to register for two years as a gun offender. Some individuals may not have pled guilty and may have gone to trial if they knew they were going to be required to register with the gun offender registry. PDS suggested that the Youth Act amendment apply only prospectively so as to provide notice to persons that, despite a set aside, they will have to comply with the gun offender registry requirements. This provision has been amended to apply to convictions on or after January 1, 2011.

The Committee recommends adoption of this subsection with amendments.

**JUVENILE HEARINGS**

D.C. Official Code § 16-2317(d)(1) permits the Family Court to terminate proceedings and discharge a child from detention, shelter care, or other restrictions previously ordered if the court finds that the child is not in need of care or rehabilitation. Prior to 2004, the court could dismiss the case at any time – including before the dispositional/fact finding hearing. In 2004, the Council passed the Omnibus Juvenile Justice Act of 2004 and amended § 16-2317(d)(2) to prohibit a dismissal prior to a fact finding hearing.\(^6\) The Council believed that allowing dismissals prior to a fact finding hearing failed to give victims their day in court and failed to hold juveniles sufficiently accountable. The fact finding hearing allows the judge to determine if there is sufficient evidence to show that the child is in need of care and rehabilitation.

Section 16-2317(d)(3) allows the juvenile to offer evidence to rebut the presumption of a need for care or rehabilitation. However, this provision only allows the juvenile to offer the evidence at the dispositional hearing. When the amendment was made to § 16-2317(d)(2) that allowed dismissal of the case at or after the dispositional hearing, a corresponding amendment was not made to § 16-2317(d)(3). Bill 18-963 is a conforming amendment and would amend § 16-2317(d)(3) to permit the juvenile to offer evidence at or after the dispositional hearing.

\(\text{---}^5\) See, D.C. Official Code § 22-4503.

\(\text{---}^6\) See, D.C. Law 15-261.
The Committee recommends adoption of this subsection.

**RESTITUTION**

D.C. Official Code § 23-1901 provides a crime victim with the right to “an order of restitution from the person convicted of the criminal conduct that causes the victim’s loss or injury.” D.C. Official Code § 16-711 provides the authorization for the court to award restitution. Restitution can be ordered in adult criminal and juvenile cases but, at least in the adult system, it is not always paid by the time probation or supervised release ends. At that point, the court may lose the ability to enforce the order. Even so, the only remedies currently available for failure to pay restitution are contempt and revocation of probation. Neither of these remedies satisfies the judgment or makes the victim whole. Bill 18-963 would amend the law to provide that a restitution order constitutes a civil judgment that can be filed as a lien against property, including garnishment of wages, attaching tax refunds, writs of attachment, and similar mechanisms to enforce the judgment. This will enhance the victim’s ability to collect what is due. It will give added protections to victims when defendants have resources or assets that can be used to satisfy this obligation to make the victim whole again.

The Committee recommends adoption of these subsections.

**II. LEGISLATIVE CHRONOLOGY**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 29, 2010</td>
<td>Bill 18-884, the “Gun Offender Registration Emergency Amendment Act of 2010,” is approved by the Council (second reading on a temporary version of the legislation, Bill 18-885, is approved by the Council on July 13, 2010).</td>
</tr>
<tr>
<td>July 13, 2010</td>
<td>Bill 18-963, the “Criminal Code Amendment Act of 2010” is introduced by Councilmember Mendelson and referred to the Committee on Public Safety and the Judiciary.</td>
</tr>
<tr>
<td>July 23, 2010</td>
<td>Notice of intent to act on Bill 18-963 is published in the <em>D.C. Register</em>.</td>
</tr>
<tr>
<td>August 13, 2010</td>
<td>Notice of a Public Hearing on Bill 18-963 is published in the <em>D.C. Register</em>.</td>
</tr>
<tr>
<td>September 27, 2010</td>
<td>The Committee on Public Safety and the Judiciary holds a public hearing on Bill 18-963.</td>
</tr>
</tbody>
</table>

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7 The language for this amendment was first introduced in Bill 18-595, the “Neighborhood and Victims Rights Amendment Act of 2009”. A hearing for Bill 18-595 was held on April 19, 2010.
October 5, 2010  Bill 18-1031, the “Asbestos Statute of Limitations Clarification Emergency Act of 2010,” is approved by the Council (second reading on a temporary version of the legislation, Bill 18-1032, is approved by the Council on November 9, 2010).

December 1, 2010  The Committee on Public Safety and the Judiciary marks-up Bill 18-963.

III.  POSITION OF THE EXECUTIVE


IV.  POSITION OF THE ADVISORY NEIGHBORHOOD COMMISSION

The Committee received no testimony or comments from Advisory Neighborhood Commissions.

V.  SUMMARY OF TESTIMONY

The Committee on Public Safety and the Judiciary held a public hearing on Bill 18-963, the Criminal Code Amendment Act of 2010 on September 27, 2010. The testimony summarized below is from those hearings:


Patricia Riley, Special Counsel to the U.S. Attorney, U.S. Attorney’s Office, District of Columbia, testified in support of Bill 18-963. “This bill encompasses a number of amendments which are in large part technical in nature. They include conforming amendments, amendments for consistency, and amendments that are necessary to achieve the purposes that the Council intended.”

Laura Hankins, Special Counsel, Public Defender Service, testified in opposition to certain provisions of Bill 18-963. In particular, Ms. Hankins opposed the provision making the gun offender registry retroactive – citing that this will pose a notice problem for scores of individuals who currently have no obligation to register; imposing an affirmative defense on defendants to the offense of presence in a motor vehicle with a firearm; amending the escape statute; expanding mandatory minimum sentencing; expanding pre-trial detention to include presence in a motor vehicle with a firearm; and expanding the Youth Rehabilitation Act to include gun offender registration. She also spoke in opposition to the Bill’s provision to expand the contraband statute to include numerous facilities and institutions.
T.J. Sutcliffe, Director of Advocacy and Public Policy, the Arc of the District of Columbia, testified in opposition to provision in Bill 18-963 that would expand the escape statute to include escape from an institution or facility in which a person is confined pursuant to a court order. Ms. Sutcliffe is concerned that as drafted, the Bill may unintentionally cover people who have been civilly committed to residential facilities through the Superior Court’s Mental Health/Mental Retardation Division. As such, she suggested adding an exception to exclude those individuals from the escape statute.

Richard Gilbert, Chair Legislative Committee, District of Columbia Association of Criminal Defense Lawyers, submitted a letter concerning Bill 18-963. In particular, Mr. Gilbert opposed certain amendments to the gun offender registry; imposing an affirmative defense on the offense of presence in a motor vehicle with a firearm; expanding mandatory minimum sentencing; and expanding pre-trial detention to include presence in a motor vehicle with a firearm. Mr. Gilbert was also concerned about the amendment to the anti-sexual abuse statute that would make it illegal to “arrange, offer or accept an invitation to engage in a sexual act or sexual contact with” a child – whether real or fictitious. Mr. Gilbert suggested limiting the crime to “arranging” to engage in a sexual act or sexual contact with the child. He stated that “[t]his will eliminate casual offers and acceptance which come to nothing, but still give leeway to reach the predator who malevolently stalks and grooms his victims and the persons who negotiate away their protection of the child.”

V. IMPACT ON EXISTING LAW

The 17 substantive sections of Bill 18-963 would make numerous amendments to the D.C. Code. These amendments include: establishing that the penalty is solely civil for failure of a registrant to notify the Chief of Police of changes in material information regarding the registration; delaying the requirement to microstamp pistols to January 1, 2013; clarifying that gun offenders convicted at any time, who fall within the registration requirement’s time period, shall register with the gun offender registry; clarifying that the statute of limitations in asbestos injury cases is the later of either 3 years or 1 year after disability or death; establishing that a judgment of restitution or reparation ordered in an adult or juvenile criminal proceeding is enforceable in the same manner as a civil judgment; restoring language regarding animal cruelty in the intrafamily offenses act; allowing public inspection of law enforcement records that pertain to a civil Notice of Violation such as littering; expanding the misdemeanor prohibition for tampering with a GPS bracelet or electronic monitoring device, to include radio frequency identification systems, and to include incarcerated individuals; revising the monetary threshold for felony theft; expanding the escape statute to prohibit a juvenile from escaping from an institution or facility in which the juvenile was placed by the Department of Youth Rehabilitation Services; establishing a requirement for gun offender registration for any youth whose conviction for a gun offense was set aside under the Youth Rehabilitation Act. Bill 18-963 would also establish a criminal penalty for arranging for a sexual act or contact with a real or fictitious child and would permit a warrantless arrest for the offense of misdemeanor sexual abuse.
VI. FISCAL IMPACT

The Committee adopts the November 30, 2010 fiscal impact statement by the Office of the Chief Financial Officer stating that funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed resolution.

VII. SECTION BY SECTION ANALYSIS

Section 1 States the short title of Bill 18-963.

Section 2 Revises D.C. Code § 7-2502.03 to clarify that an intrafamily offense includes similar provisions in the laws of other jurisdictions.

Amends D.C. Code § 7-2502.03 to prohibit a convicted felon from possessing a “firearm”. This conforms with the amendment made in the Omnibus Public Safety Amendment Act of 2006 (D.C. Law 16-306, effective April 24, 2007) that prohibits a convicted felon from possessing any “firearm,” as opposed to only a “pistol”.

Amends D.C. Code § 7-2502.08 to clarify the duties of gun owner registrants. The Committee realized that the criminal penalty section in the gun registration law would apply in addition to the civil penalties that were written in D.C. Law 17-372, the “Firearms Registration Amendment Act of 2008”, and this would be unreasonable. For example, if a registrant fails to notify the Chief of Police that he or she changes his or her address, the registrant would be subject to both a misdemeanor conviction prescribed in § 7-2507.06, as well as the civil penalties proscribed in § 7-2502.09 (being moved to § 7-2502.08). This is not the intent of the Committee. The Print makes other minor adjustments to reduce the burden on registrants.

D.C. Official Code § 7-2504.08(b) and § 7-2505.03 delay the applicability date for microstamping from January 1, 2011 until January 1, 2013. Microstamping, which creates microscopic markings on a cartridge after a firearm is fired, allows law enforcement to identify a firearm the first time it is used in a crime. California, in 2007, became the first state to require microstamping on all new models sold in the state. However, that state has only recently issued regulations to effectuate that requirement. The District had initially set the applicability date for its microstamping requirement for 2011, in order to incorporate best practices learned from California’s experience. However, as California is only now putting this into practice, it is necessary for the District to delay its own implementation of microstamping to allow the model being developed in California to be refined.
Amends D.C. Code § 7-2508.01 to clarify that persons who were convicted of a gun offense before the effective date of D.C. Act 18-129 (an emergency act that preceded D.C. Law 18-88) are gun offenders and must register with the Gun Offender Registry. Also adds attempt or conspiracy to carry a pistol without a license and attempt or conspiracy to possess an unregistered firearm to the list of firearms offenses that require registration.

Amends D.C. Code § 7-2508.02 to clarify that the 48-hour period in which to register with the Gun Offender Registry does not include weekends, legal holidays and days when the government is closed. Deletes the requirement of a gun offender to provide the name of all aliases used, the name and address of the offender’s place of work, and the name and phone number of the offender’s supervisor.

Amends D.C. Code § 7-2508.04 to clarify that the gun offender registration requirement applies to persons who were not notified at the time of sentencing or release into the community but who are within the registration period.

Section 3  Amends D.C. Code § 12-311 to clarify that this statute of limitations provision regarding asbestos injury or illness does not shorten the period otherwise provided by D.C. Code § 12-301. It is the longer of either three years after diagnosis (§ 12-301) or one year after disability or death in asbestos cases (§ 12-311). Asbestos injury can take many years to manifest itself, and then it can either be an aggressive, rapidly growing tumor, or it can be a slow but progressive disease that is not immediately disabling.

Section 4  Adds a new § 16-711.01 to provide for procedures for enforcing orders of restitution against defendants in adult criminal cases and provide that a restitution order constitutes a civil judgment that can be filed as a lien against real or personal property.

Section 5  Amends D.C. Code § 16-1001 et seq. to allow a victim, who alleges that he or she is the victim of interpersonal, intimate partner, or intrafamily violence, stalking, sexual assault, or abuse, to seek a temporary restraining order or a civil protection order against his or her abuser if the abuser abuses an animal in the care of the victim as a means of coercing, punishing or threatening the victim. Cruelty to the animal itself cannot be a means to seek the order – it must be paired with the domestic violence of the victim.

Section 6  Amends D.C. Code § 16-2317(d)(3) to clarify that a juvenile may offer evidence to rebut the presumption of a need for care or rehabilitation at or after a dispositional hearing.

Amends D.C. Code § 16-2320.01 to provide for procedures for imposing and enforcing orders of restitution against respondents in juvenile criminal cases and
provide that a restitution order constitutes a civil judgment that can be filed as a lien against real or personal property.

Amends D.C. Code § 16-2333(a) to allow for the public inspection of juvenile law enforcement records that pertain to a civil Notice of Violation. The Metropolitan Police Department (“MPD”) has stated that there is a problem with enforcing littering tickets issued to juveniles. This is due to the fact that the current law would require the Office of Administrative Hearings (“OAH”) – the agency responsible for adjudicating a civil Notice of Violation – to establish a separate system to ensure the confidentiality of littering tickets issued to juveniles. This is because D.C. Code § 16-2333 provides that except for specified circumstances, juvenile law enforcement records are to remain confidential. Juvenile confidentiality is a mechanism to help delinquent juveniles rehabilitate themselves by shielding them from the stigma of delinquent behavior and help transform them into productive members of society. Because a littering ticket is not likely to stigmatize a juvenile, the shield of confidentiality does not outweigh the need for OAH to adjudicate these violations. Bill 18-963 will assist MPD and OAH with enforcing juvenile civil infractions for littering.

Section 7 Amends D.C. Code § 22-303 to increase the threshold for property damage due to arson from $200 to $1,000.8

Section 8 Amends D.C. Code § 22-1211 to make it unlawful for an inmate to tamper with a detection device, including a device that utilizes radio frequency identification, and broadens the applicability of § 22-1211 to include incarcerated individuals.

Section 9 Amends D.C. Code § 22-2601 (escape) to include persons committed to the Department of Youth Rehabilitation Services (DYRS). This amendment will close a loophole. Under current law, it is illegal for a youth to escape or attempt to escape from a DYRS facility pre-disposition because he or she is confined pursuant to a court order. It is also illegal for a youth to escape while in transit because he or she will be in the lawful custody of an officer of the District of Columbia or the United States. It is not illegal, however, for the same youth to escape or attempt escape from a DYRS facility after he or she has been adjudicated delinquent because, first, a court order committing a youth to DYRS is not a court order to confine that person in an institution or facility. DYRS makes the decision whether to place the youth in an institution or facility. Second, a youth committed to DYRS who is placed in a contract facility is not necessarily “in the lawful custody of an officer or employee of the District of Columbia or the United States.” Third, current law has been construed to apply

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8 In 2009, the Council changed the penalties for a number of offenses (theft, credit card fraud, and identity theft) so that the dividing line between a felony and a misdemeanor is $1,000 instead of $200 or $250. The amendments in sections 7 and 12 of Bill 18-963 will apply the same dividing line to other offenses (destruction of property, fraud, insurance fraud, receiving stolen property, altering motor vehicle identification numbers, and forgery), the seriousness of which is measured by the monetary value of the property at issues.
only within the boundaries of the District of Columbia. Section 9 remedies this defect: by adding persons committed to DYRS, by including any DYRS placement, and by specifying that the facility or institution can be outside the District.

In addition, Section 9 makes clear that the sentence for escape begins after completion of a juvenile’s sentence as well as an adult’s sentence for the underlying offense.

Section 10 Amends D.C. Code § 22-2603.01 to amend the definition of cellular telephone to include accessories and any device that would enable or facilitate the use of a mobile telephone or other portable communication device.

Section 11 Amends D.C. Code § 22-3010.02 to make it unlawful for a person to arrange for a sexual act or contact with a real or fictitious child. The fictitious arrangement is limited to arrangements done by or with a law enforcement officer.

The introduced version of Bill 18-963 included a maximum penalty 20 years and $200,000. The Committee Print reduces this penalty to 5 years and $50,000. This matches the penalty in D.C. Code § 22-3010 – the penalty for enticing a child.

Amends D.C. Code § 22-3011 to include domestic partnership with a child or minor as a defense to child sexual abuse and sexual abuse of a minor. This updates the law, which currently recognizes only marriage as a defense.

Section 12 Amends D.C. Code § 22-3222 to increase the threshold of fraud from $250 to $1,000.

Section 13 Amends D.C. Code § 22-4503 to clarify that no person shall possess a firearm if he/she has been issued a civil protection order requiring him/her to relinquish a firearm, regardless of whether the civil protection was issued in the District or another jurisdiction. As currently written, the prohibition to possess a firearm is limited to civil protection orders that have been issued by the Superior Court. This amendment is necessary to protect domestic violence victims. The amendment is also consistent with the general principle that out-of-state protection orders should be given full effect in the District of Columbia.9

Section 14 Amends D.C. Code § 23-546(c) to increase the threshold for an application to intercept wire or oral communications to account for the increase in the threshold for felony destruction of property, theft and receiving stolen property. This amendment is consistent with the amendments made in section 214(d) of D.C. Law 18-88, the Omnibus Public Safety and Justice Amendment Act of 2009, and

sections 7 and 12 of Bill 18-963, that changed the threshold between misdemeanor and felony offenses of theft and receiving stolen property to $1,000.

Section 15  Amends D.C. Code § 23-581 to allow an officer to conduct a warrantless arrest if the officer has probable cause to believe the person has committed misdemeanor sexual abuse or misdemeanor sexual abuse of a child or minor. This amendment will allow an officer to make an immediate arrest to protect the victim from further harm, prevent further harm to others, and preserve evidence.

Section 16  Amends D.C. Code § 23-1301 to change the title of the Pretrial Service Agency to the Pretrial Service Agency for the District of Columbia. This amendment would make the agency’s name consistent with other criminal justice agencies in the District including: the Court Services and Offender Supervision Agency for the District of Columbia; the Attorney General for the District of Columbia; the United States Attorney for the District of Columbia; and the Public Defender Service for the District of Columbia.

Section 17  Amends D.C. Code § 24-906 to: 1) require a Youth Act offender who committed a crime with a firearm to register with the gun offender registry; and 2) permit a conviction that has been set aside to form the predicate for possession of a firearm by a convicted felon.

Section 18  Fiscal impact statement.

Section 19  Effective date.

VIII. COMMITTEE ACTION

On December 1, 2010, the Committee on Public Safety and the Judiciary met to consider Bill 18-963, the “Criminal Code Amendment Act of 2010”. The meeting was called to order at 2:17 p.m., and Bill 18-963 was the only item on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Alexander, Bowser, Cheh, and Evans present), Chairman Mendelson moved the print with leave for staff to make technical changes. After the opportunity for discussion, the vote on the print was unanimous (Chairman Mendelson and Councilmembers Alexander, Bowser, Cheh, and Evans voting aye). Chairman Mendelson then moved the report, with leave for staff to make technical and editorial changes. After the opportunity for discussion, the vote on the report was unanimous (Chairman Mendelson and Councilmembers Alexander, Bowser, Cheh, and Evans voting aye). The meeting adjourned at 2:25 p.m.

IX. ATTACHMENTS

1.  Bills 18-963 as introduced.
2. Written testimony and statements.
4. Committee print for Bill 18-963.