

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2005 Winter  
Supp.

West Group  
Publisher

To change the manner in which adults facing criminal charges who may be incompetent to stand trial are evaluated and treated; to amend An Act To establish a code of law for the District of Columbia to repeal unnecessary provisions pertaining to competency of criminal defendants.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Incompetent Defendants Criminal Commitment Act of 2004".

TITLE I. EVALUATION AND TREATMENT  
OF INCOMPETENT DEFENDANTS

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) "Competence" means that a defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational, as well as a factual, understanding of the proceedings against him or her.

(2) "Court" or "Superior Court" means the Superior Court of the District of Columbia.

(3) "Defendant" means a defendant in a criminal case or a respondent in a transfer proceeding.

(4) "DMH" means the Department of Mental Health.

(5) "Incompetent" means that, as a result of a mental disease or defect, a defendant does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(6) "Inpatient treatment facility" means:

(A) Saint Elizabeths Hospital;

(B) Any other physically secure hospital for the examination or treatment of persons with mental illness; or

(C) Any physically secure or staff-secure facility for the examination, treatment, or habilitation of persons with mental retardation.

(7) "MRDDA "means the Mental Retardation and Developmental Disabilities Administration.

(8) "Transfer proceeding" means a proceeding pursuant to D.C. Official Code § 16-2307 to transfer a respondent who is alleged to be a delinquent in a juvenile case from the Family Court to the Criminal Division of the Superior Court of the District of Columbia to face adult criminal charges.

(9) "Treatment" means the services or supports provided to persons with mental

illness or mental retardation, including services or supports that are offered or ordered to restore a person to competence, to assist a person in becoming competent, or to ensure that a person will be competent.

(10) "Treatment provider" means:

- (A) The Department of Mental Health;
- (B) The Mental Retardation and Developmental

Disabilities Administration;

(C) An inpatient treatment facility as defined in paragraph (6) of this

section; or

(D) Any other entity or individual designated by the DMH or MRDDA to provide evaluation, examination, treatment, or habilitation pursuant to this title that:

(i) Is duly licensed or certified under the laws of the District of Columbia to provide services or supports to persons with mental illness or mental retardation, or both; and

(ii) Has entered into an agreement with the District to provide mental health services or mental health supports or to provide services or supports to persons with mental retardation.

Sec. 102. Competence to proceed -- generally.

(a) A defendant shall not be tried, be sentenced, enter a guilty plea, or be subject to revocation of probation or a transfer proceeding if the court determines that the defendant is incompetent.

(b)(1) Any proceeding to determine whether a defendant is incompetent shall not delay a determination of probable cause to believe that the defendant has committed the offense with which he or she is charged or the defendant's eligibility for pretrial release or detention pursuant to Subchapter I of Chapter 23 of Title 16 or Subchapter II of Chapter 13 of Title 23 of the District of Columbia Official Code.

(2) A defendant who is otherwise entitled to pretrial release shall not be involuntarily confined or taken into custody solely because the issue of the defendant's competence has been raised and an examination or treatment has been ordered, unless the court determines that the defendant may be committed as an inpatient for a full competence examination pursuant to section 103(e) or for competence treatment pursuant to section 105.

(3) If the court orders a full competence examination or competence treatment on an outpatient basis, the court may order the defendant to appear at a designated time and place for the examination or treatment and may make the appearance a condition of the defendant's pretrial release.

(c) The prosecutor or defense attorney may file any motion in the underlying criminal case, transfer proceeding, or probation revocation at any time while the defendant is incompetent. The court shall hear and decide any issue presented by the motion if the defendant's presence is not constitutionally required or, as determined by the court, essential for a fair hearing.

(d) Nothing in this title shall be construed to prevent the government or any person from petitioning the court for involuntary civil commitment pursuant to Subchapter IV of Chapter 5 of Title 21 of the District of Columbia Official Code or Title IV of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.01 *et seq.*).

Sec. 103. Competence examinations.

(a) At any time after the prosecutor moves for a transfer from the Family Court to the Criminal Division of the Superior Court or charges a criminal offense by complaint, information, or indictment, either party may request, or the court on its own may order, that the defendant be examined to determine the defendant's competence.

(b) When the issue of a defendant's competence has been raised, the court shall order a preliminary screening examination before ordering a full competence examination pursuant to subsection (d) of this section.

(c)(1) A preliminary screening examination shall be performed either in the courthouse or on an outpatient basis by a psychiatrist or psychologist affiliated with the Department of Mental Health.

(2) The court shall schedule a return date or time for the defendant as early as possible following the order for the preliminary screening examination issued pursuant to subsection (b) of this section. In no case shall the return date be more than 3 business days after the order if the defendant is not released and no more than 5 business days after the order if the defendant is released.

(3) The examination shall be completed and a report submitted to the court in advance of the return date or time. The report shall indicate whether the defendant is competent, incompetent, or whether further evaluation is needed.

(4) The court shall consider the report of the preliminary screening examination, any arguments made by the parties, and any other information available to the court, and shall either:

(A) Find the defendant competent and resume the criminal case or transfer proceeding; or

(B) Order the defendant to submit to a full competence examination.

(d)(1) An order for a full competence examination pursuant to subsection (c)(4)(B) of this section shall direct the Department of Mental Health to examine the defendant. The full competence examination shall be performed by a psychiatrist or psychologist affiliated with the Department of Mental Health.

(2) The Department of Mental Health shall submit a written report to the court as to the defendant's competence.

(3) Any psychiatrist or psychologist who participated in the examination shall be available to testify at any hearing involving the defendant's competence.

(e) A full competence examination may be conducted on an inpatient or outpatient basis. The court may order the defendant committed to Saint Elizabeths Hospital or to the Department of Mental Health for an inpatient examination only after a finding by the court that:

(1) Placement in an inpatient treatment facility is necessary in order to conduct an adequate examination; or

(2) The defendant is unlikely to comply with an order for an outpatient examination.

(f)(1) If the court orders the defendant committed as an inpatient for a full competence examination under subsection (e) of this section, the commitment for examination shall not exceed 30 days, except that the commitment may be extended for a 15-day period for good cause shown.

(2)(A) The Department of Mental Health shall submit a written report to the court:

(i) As soon as it reaches a conclusion that the defendant is competent or is incompetent; or

(ii) Any time it determines that the criteria for an inpatient

examination set forth in subsection (e) of this section are no longer met.

(B) If the defendant is reported incompetent, the report shall include an opinion regarding the likelihood of the defendant's attaining competence in the foreseeable future or should state that no opinion has been formed on the likelihood of the defendant attaining competence.

(C) If a report indicates that the criteria for an inpatient examination set forth in subsection (e) of this section are no longer met, the court shall make new findings under subsection (e) of this section and, if it determines that the examination can be conducted on an outpatient basis, shall determine the defendant's eligibility for pretrial release pursuant to Subchapter I of Chapter 23 of Title 16 or Subchapter II of Chapter 13 of Title 23 of the District of Columbia Official Code, if it has not previously done so. If necessary, the court may enter a new order for a full competence examination to be completed on an outpatient basis.

(D) If the court receives either report required under subparagraph (A) of this paragraph more than one court day prior to the scheduled return date, the court shall have the defendant brought before the appropriate judge on the next court day following receipt of the report for appropriate proceedings under section 104.

(g)(1) If the court orders a full competence examination to be conducted on an outpatient basis, it shall be completed and a report submitted to the court in advance of the defendant's return date as determined under section 104(a).

(2) The Department of Mental Health shall submit a written report to the court at any time it determines that the criteria for an inpatient examination set forth in subsection (e) of this section are met. If the court receives such a report, it shall schedule the matter for a hearing as soon as practicable, to determine the appropriate disposition under subsection (e) of this section.

Sec. 104. Initial competence determination.

(a)(1) A hearing to determine competence of a defendant shall be set:

(A) No more than 30 days from the date the competence examination is ordered for a defendant who is detained or committed for an inpatient examination; and

(B) No more than 45 days from the date the competence examination is ordered for a defendant who is released and ordered to participate in an outpatient examination.

(2) On its own motion or the motion of one of the parties, and for good cause shown, the court may extend the time for the hearing by not more than 15 days.

(b) A defendant is presumed to be competent. Incompetence must be established by a preponderance of the evidence. The burden of proof is on the party asserting incompetence. The court may call its own witnesses and conduct its own inquiry.

(c)(1) At the conclusion of the hearing, the court shall:

(A) Find that the defendant is competent; or

(B) Find that the defendant is incompetent and:

(i) Is likely to attain competence in the foreseeable future or additional time is necessary to assess whether the defendant is likely to attain competence in the foreseeable future; or

(ii) Is unlikely to attain competence in the foreseeable future.

(2) If the court finds the defendant is competent, it shall resume the criminal case or transfer proceeding.

(3) If the court finds the defendant is incompetent and makes either of the findings under paragraph (1)(B)(i) of this subsection, the court shall order treatment for the restoration of competence.

(4) If the court finds the defendant is incompetent and unlikely to attain competence in the foreseeable future, the court shall order either the release of the defendant or further treatment pursuant to section 106(c)(4).

Sec. 105. Competence treatment.

(a)(1) If the court makes a finding pursuant to section 104(c)(1)(B)(i), the court may order the defendant to participate in treatment for restoration of competence on an inpatient or outpatient basis. The court shall order treatment in the least restrictive setting consistent with the goal of restoration of competence.

(2) The court may order inpatient treatment if it finds that:

(A) Placement in an inpatient treatment facility setting is necessary in order to provide appropriate treatment; or

(B) The defendant is unlikely to comply with an order for outpatient treatment.

(3) If the court orders treatment on an outpatient basis, it shall direct DMH or MRDDA, or both, to designate an appropriate treatment provider. If the court orders treatment on an inpatient basis it shall commit the defendant to Saint Elizabeths Hospital or direct DMH or MRDDA, or both, to designate an appropriate inpatient treatment facility.

(b) Except as provided in subsections (c) and (d) of this section, the court may order the defendant to undergo competence treatment on an inpatient basis for one or more periods of time, not to exceed 180 days in the aggregate.

(c) Except as provided in subsection (d) of this section, the court may order a defendant charged with a crime of violence, as defined in D.C. Official Code § 23-1331(4), to undergo competence treatment on an inpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds:

(1) There is a substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal; and

(2) Inpatient treatment is the least restrictive setting based on the criteria set forth in subsection (a) of this section.

(d)(1) Excluding extended treatment pending the completion of civil commitment proceedings ordered pursuant to section 106(c)(4) or section 107(a)(2), inpatient treatment may last no longer than the maximum possible sentence that the defendant could have received if convicted of the pending charges.

(2) If, during inpatient treatment ordered to restore a defendant to competence, the maximum possible sentence the defendant could have received if convicted of the pending charges expires, the court shall either release the defendant or, where appropriate, enter an order for extended treatment pursuant to section 106(c)(4) or section 107(a)(2).

(3) The defendant shall be awarded credit against any term of imprisonment imposed after being found competent for any time during which he was committed to an inpatient treatment facility for either a competence examination or competence treatment.

(e)(1) The court may order the defendant to undergo competence treatment on an outpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds there is substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal.

(2) The Department of Mental Health or the treatment provider shall submit a written report to the court at any time it determines that the criteria for inpatient treatment set forth in subsection (a) of this section are met.

Sec. 106. Court hearings during and after treatment.

(a) The Court shall hold a prompt hearing, with reasonable notice of such hearing given to the prosecuting attorney, the defendant, and the defendant's attorney of record, and make a new finding as to the defendant's competence when:

(1) Any period of treatment ordered under section 105(b), (c), or (e) of this section is completed; or

(2) The treatment provider reports to the court that reasonable grounds exist to believe that:

(A) An incompetent defendant has attained competence;

(B) There is no longer a substantial probability that a defendant will attain competence during the allowable treatment period;

(C) If the defendant is committed to an inpatient treatment facility, such commitment is no longer the least restrictive setting considering the factors in section 105(a); or

(D) If the defendant has been ordered to undergo competence treatment on an outpatient basis, such a setting is no longer appropriate considering the factors in section 105(a).

(b) In advance of any hearing held pursuant to subsection (a) of this section, the treatment provider shall submit a written report to the court addressing:

(1) The defendant's competence, including any progress or lack thereof made toward attaining competence;

(2) Whether there is a substantial probability that the defendant will attain competence during the foreseeable future, or make substantial progress toward that goal;

(3) If the defendant is committed to an inpatient facility, whether such commitment remains the least restrictive setting considering the factors in section 105(a); and

(4) If the defendant has been ordered to undergo treatment on an outpatient basis, whether such a setting is no longer appropriate considering the factors in section 105(a).

(c)(1) At the conclusion of a hearing held pursuant to subsection (a) of this section, the court shall:

(A) Find that the defendant is competent; or

(B) Find that the defendant is incompetent and:

(i) There is a substantial probability that the defendant will attain competence or make substantial progress toward that goal with an additional period of time; or

(ii) There is no substantial probability that he or she will attain competence or make substantial progress toward that goal in the foreseeable future.

(2) If the court finds the defendant is competent, it shall order the criminal case or transfer proceeding to be resumed.

(3) If the court finds the defendant is incompetent pursuant to paragraph (1)(B)(i) of this subsection, the court shall order treatment for an additional period of time in accordance with section 105(b), (c), or (e), after making a finding as to the least restrictive placement for treatment pursuant to section 105(a).

(4) If the court finds the defendant is incompetent pursuant to paragraph (1)(B)(ii) of this subsection, the court shall either order the release of the defendant or, where appropriate, enter an order for treatment pursuant to section 105(a) for up to 30 days pending the filing of a petition for civil commitment pursuant to Subchapter IV of Chapter 5 of Title 21 of the District of Columbia Official Code or Title IV of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.01 *et seq.*). The court also may order treatment pursuant to section 107(a)(2) for such period as is necessary for the completion of the civil commitment proceedings.

**ENROLLED ORIGINAL**

Sec. 107. Extending treatment pending the completion of a civil commitment proceeding.

(a) Thirty days after the court has ordered extended treatment pursuant to section 106(c)(4), the court shall hold a status hearing to determine whether civil commitment proceedings have been initiated pursuant to D.C. Official Code § 21-541 or Title IV of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.01 *et seq.*).

(1) If a petition for civil commitment has not been filed prior to the hearing, the court shall release the defendant from treatment unless extraordinary cause is shown for the failure to file the petition, in which case the court may grant an additional 5 days within which to file a petition.

(2) If a petition for civil commitment has been filed, the court may either order that treatment be continued until the entry of a final order in the civil commitment case or release the defendant from treatment.

(b)(1) If the court orders the release of a person in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has been filed pursuant to Title IV of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.01 *et seq.*) ("Act"), the court shall remand the person to the inpatient treatment facility and the inpatient treatment facility may detain the person pending a hearing on the petition conducted pursuant to section 312a of the Act (D.C. Official Code § 7-1303.12a).

(2) Within 7 days of the remand order, a person so detained may request a probable cause hearing on the defendant's continued detention before the Family Court of the Superior Court of the District of Columbia, in which case a hearing shall be held within 24 hours after the receipt of the request.

(c)(1) If the court orders the release of a person in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has been filed pursuant to D.C. Official Code § 21-541, the court shall remand the person to the inpatient treatment facility and the inpatient treatment facility may detain the person pending a hearing on the petition conducted pursuant to D.C. Official Code § 21-542.

(2) Within 7 days of the remand order, a person so detained may request a probable cause hearing on the person's continued detention before the Family Court of the Superior Court of the District of Columbia pursuant to D.C. Official Code § 21-525, in which case a hearing shall be held within 24 hours after the receipt of the request.

(d) If the court orders the release of a defendant in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has not been filed pursuant to D.C. Official Code § 21-541 or Title IV of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.01 *et seq.*), the court may stay the defendant's release for a period not to exceed 48 hours and remand the person to Saint Elizabeths Hospital or other inpatient treatment facility for the period of the stay so that the Department of Mental Health or the Mental Retardation and Development Disabilities Administration, or both, may, where appropriate, file a petition for the defendant's involuntary commitment to either the Department of Mental Health or to the Mental Retardation and Developmental Disabilities Administration, or both.

Sec. 108. Dismissal.

(a) If a defendant charged with any offense other than a crime of violence, as defined in

D.C. Official Code § 23-1331(4), does not attain competence within 180 days of an order for treatment pursuant to section 105, the charge shall be dismissed without prejudice upon:

(1) The completion of civil commitment proceedings, if a petition for commitment was filed; or

(2) A determination by the court that the time within which the government must file a petition for civil commitment has expired and a petition for civil commitment has not been filed.

(b) If a defendant charged with a crime of violence, as defined in D.C. Official Code § 23-1331(4), except murder, first degree sexual abuse, or first degree child sexual abuse, has not attained competence within 5 years of the initial order for treatment pursuant to section 104, the charge shall be dismissed without prejudice.

(c) Any charge dismissed pursuant to subsection (a) or (b) of this section may be refiled if, at any time within the statute of limitations, the defendant attains competence; provided, that a defendant may not be arrested or detained on such a charge unless a court has found that the defendant is competent.

(d) Nothing in this section shall preclude the prosecutor or the defendant from moving to dismiss a case at an earlier time on any appropriate grounds.

Sec. 109. Involuntary medication.

(a) Except as set forth in subsection (b) of this section, a defendant who is ordered to submit to a competence examination under section 103, or a defendant who is determined after a hearing to be incompetent and is ordered by the court to undergo treatment pursuant to sections 105 or 106, may not be administered medication involuntarily if the sole purpose for doing so would be to render the defendant competent. For any other purpose, the defendant may be administered medication without his or her consent consistent with section 208 of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.08), and the regulations promulgated thereunder.

(b)(1) The Court may order the involuntary administration of medication for the sole purpose of rendering the defendant competent only if:

(A) It orders the defendant to participate in treatment for restoration of competence pursuant to section 105; and

(B) The Court determines that the government's interest in bringing the defendant to trial or proceeding with sentencing, probation revocation, or transfer outweighs the defendant's interest in refusing medication to render him or her competent.

(2) In making the determination required by paragraph 1(B) of this subsection, the court must find that:

(A) The defendant has been charged with a dangerous crime or a crime of violence as those terms are defined in D.C. Official Code § 23-1331(3) and (4), respectively;

(B) The administration of medication is substantially likely to render the defendant competent;

(C) The administration of medication is substantially unlikely to have side effects that will significantly interfere with the defendant's ability to assist counsel in conducting a defense;

(D) Involuntary medication is necessary to further the government's interest because any less intrusive treatments alternatives are unlikely to render the defendant competent; and

(E) The administration of medication is medically appropriate.

Sec. 110. Statements made during the course of competence examination or



treatment.

(a) Any statement that is obtained during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, is not admissible at any proceeding to determine a defendant's guilt or innocence or to determine an appropriate sentence, except when the defendant puts his competence or mental health at issue in the proceeding.

(b) Any statement made by the defendant during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, concerning any other event or transaction is not admissible at any proceeding to determine the defendant's guilt or innocence of any other criminal charges or to determine an appropriate sentence based on those events or transactions, except when the defendant puts his competence or mental health concerning those events or transactions at issue in any legal proceeding.

Sec. 111. Tolling provisions.

In computing any time period in this title, the court shall exclude the following periods:

(1) Any time in which the defendant is unable to participate in a preliminary screening examination, a full competence examination, or treatment to restore competence due to physical incapacity;

(2) Any time in which the defendant fails or refuses to participate in a preliminary screening examination, a full competence examination, or treatment to restore competence;

(3) Any time due to the defendant's failure to appear for a preliminary screening examination, a full competence examination, or treatment to restore competence; and

(4) Any time from the filing of a motion or petition through its disposition, including any appeals, which prevents or delays the conduct of a preliminary screening examination, a full competence examination, or treatment to restore competence, including involuntary medication.

Sec. 112. Independent experts.

At any time from the initial court appearance through the conclusion of the transfer proceeding or the criminal case, the Court may, upon request, authorize either the prosecutor or defense attorney, or both, to engage one or more independent experts to examine the defendant for competence and any related issues.

Sec. 113. General provisions.

(a) Nothing in this title shall preclude a person confined under the authority of this title from establishing his or her eligibility for release under the provisions of this title by a writ of habeas corpus.

(b) The provisions of this title shall supersede in the District of Columbia the provisions of any federal statutes or parts thereof inconsistent with this title.

(c) When a person has been ordered confined in a hospital for the mentally ill pursuant to this title and has escaped from such hospital, the court which ordered confinement shall, upon request of the government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

TITLE II. REPEALER; CONFORMING AMENDMENTS

**ENROLLED ORIGINAL**

Sec. 201. Section 927 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1340; D.C. Official Code § 24-501), is amended as follows: **Amend § 24-501**

- (a) Subsection (a) is repealed.
- (b) Subsection (a-1) is repealed.
- (c) Subsection (b) is repealed.

Sec. 202. Section 929 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1340; D.C. Official Code § 24-503), is amended by repealing subsection (a). **Amend § 24-503**

Sec. 203. Section 16-2307(c) of the District of Columbia Official Code is amended by striking the phrase “section 24-501” each time it appears and inserting the phrase “Title I of the Incompetent Defendants Criminal Commitment Act of 2004, passed on 2<sup>nd</sup> reading on December 21, 2004 (Enrolled version of Bill 15-967)” in its place. **Amend § 16-2307**

**TITLE III. FISCAL IMPACT STATEMENT EFFECTIVE DATE**

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective date.

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

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia