



D.C. CRIMINAL CODE REFORM COMMISSION
2024 ANNUAL REPORT TO
THE COUNCIL OF THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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As per the requirements under D.C. Code § 3-154 (c), the Criminal Code Reform Commission (CCRC) submits this report to the D.C. Council detailing the CCRC’s activities during fiscal year 2024 (“FY24”), and preliminary work in fiscal year 2025 (“FY25”).

This report provides a brief summary of the various project that the CCRC has worked on in FY24 and continues to work on thus far into FY25. If the Council has any questions or would like greater details on any of the CCRC’s work, members should not hesitate to contact the CCRC.

The CCRC’s projects can be categorized into three broad categories: 1) providing testimony and guidance to the Council on pending legislation; 2) conducting cross jurisdictional research and analysis of statutory maximum penalties and actual sentencing practices; and 3) drafting new recommendations for code reform. Each category is discussed in greater detail below.

TESTIMONY AND GUIDANCE TO THE COUNCIL ON PENDING LEGISLATION

In FY24, the CCRC provided extensive testimony and guidance to the Council relating to pending pieces of legislation.

The CCRC provided written and oral testimony on the following pieces of legislation that were pending before the Council:

- B25- 0421, The “License Suspension Reform Amendment Act of 2023”¹
- B25-0425, The “Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023”²
- B25-0479 The “Addressing Crime Through Targeted Interventions and Violence Enforcement Amendment Act of 2023”³
- B25-0555, The “Addressing Crime Trends (“ACT”) Now Amendment Act of 2023”⁴

In addition to these written and oral testimonies, the CCRC has also provided feedback in response to requests from the Committee on the Judiciary and Public Safety and to Councilmember Lewis George’s office. The CCRC provided feedback on numerous provisions included in the “Secure DC Omnibus Emergency Amendment Act of 2024”, including provisions related to changes to the strangulation offense; changes to the carjacking offense; discarding a firearm; changes to the value threshold for felony theft; the consecutive sentencing provision for possession

¹ https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/page_content/attachments/CCRC_Testimony_B25-0421_and_B25-0425_1.pdf

² https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/page_content/attachments/CCRC_Testimony_B25-0421_and_B25-0425_1.pdf

³ https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/page_content/attachments/Written%20Testimony%20ACTIVE%20Act%20-%20CCRC.pdf

⁴ https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/page_content/attachments/CCRC_ACT_Now_Written_Testimony_2.pdf

of an automatic weapon; adding mental states for penalty enhancements; and implementation of drug free zones.

Most recently in early FY25, the CCRC provided analysis of the Residential Tranquility Act to Councilmembers upon their request.

CROSS JURISDICTIONAL RESEARCH

In light of criticisms of maximum penalties authorized under the Revised Criminal Code Act of 2022 (“RCCA”), the CCRC has undertaken significant cross jurisdictional research of both statutorily authorized maximum sentences and actual sentencing practices across the nation to ensure that the penalty recommendations included in future code reform efforts are consistent with national norms.

Research on Statutory Maximum Penalties

The CCRC completed research of the maximum permissible penalties in all 50 states for robbery, armed robbery, carjacking, armed carjacking, burglary, and armed burglary. This research required meticulously reviewing criminal codes and relevant case law across the fifty states, and in some cases contacting practitioners in other jurisdiction to ascertain the statutory maximums. This was an arduous and painstaking research effort.

The CCRC has completed this research and published its findings in Research Memorandum #43: Maximum Statutory Penalties for Robbery and Carjacking Across Criminal Codes of the Fifty States.

Data Analysis of Nationwide Sentencing Practices

In making its past penalty recommendations, the CCRC has relied heavily on actual sentencing practices within the District, relying on comprehensive data provided from D.C. Superior Court.⁵ As the CCRC has noted repeatedly, even the lengthiest sentences imposed under current law are within the statutory maximums recommended under the Revised Criminal Code Act (RCCA). However, the CCRC had not compared its recommendations in the RCCA to sentencing norms across the nation. Based on the CCRC’s research, there was no publicly available comprehensive data on sentencing practices from across the nation. The CCRC’s research uncovered some publicly available reports on sentencing practices, but these resources were extremely limited. For example, one resource provided only the median sentence imposed for a single offense, for a single year. This limited data does not allow a user to know the full

⁵ See, D.C. Crim. Code Reform Comm’n, Advisory Group Memorandum #40 and Appendices (available at <https://ccrc.dc.gov/page/ccrc-documents>)

range of sentences imposed and has limited utility in informing recommendations on statutory maximum sentences as well as any potential mandatory minimums. In addition, the CCRC was interested in data not only on *sentences*, but on the amount of *actual time served*. Unlike in the District, many states have mechanisms for early release such as parole. Comparing District law and norms to other states requires ascertaining the amount of actual time served in other jurisdictions.

As there was no publicly available comprehensive data source in existence, the CCRC sought to create this source on its own to ensure that its penalty recommendations are consistent with national sentencing norms. To produce this analysis, the CCRC relied on the National Corrections Reporting Program (NCRP), a collection of state-level data on prison admissions and releases by year.⁶ The data includes extensive demographic information on an offender-level as well as details about the offenses for which they were convicted. While the data collection began in 1983, a more significant number of states began reporting as of 2000, with all 50 states reporting at least once in the 2010s. While the Bureau of Justice Statistics (BJS) collects and has ultimate authority in allowing specific uses of the data, the National Archive of Criminal Justice Data (NACJD), located within the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan, is responsible for archiving and disseminating the data for analysis.⁷ Due to confidentiality concerns, this data is not publicly available.

In late February 2022, the CCRC began a six month application process required to receive approval from NACJD to obtain access to this raw data. In addition to providing extensive written materials, CCRC was required to contract with an independent institutional review board (IRB) to get approval for the research protocol.

The CCRC's formal request to NACJD clearly stated that the CCRC's intent was to create a highly detailed set of spreadsheets that would include sentencing quantiles for *every offense* included in the data set, organized by state, region, whether a given case included one or multiple convictions, and whether the defendants had any prior convictions. After reviewing the CCRC's application materials, NACJD approved the research request and granted the CCRC access to the data set.

After obtaining this approval in September 2022, the CCRC spent the next six months cleaning and analyzing the raw information collected by BJS. The CCRC's data scientist worked almost entirely on this project, and wrote thousands of lines of code that transformed the raw information into sortable and searchable spreadsheets that included detailed sentencing quantiles. The product was a detailed spreadsheet that resembled the reporting style CCRC used for D.C. Superior Court sentencing data.⁸ The spreadsheet included anonymized data grouped by state, offense, and admission or release year. Each grouping had quantiles⁹ for sentences and time served, further distinguished by whether the offense was committed by a first time or repeat offender, and

⁶ See, <https://bjs.ojp.gov/data-collection/national-corrections-reporting-program-ncrp>.

⁷ See, <https://www.icpsr.umich.edu/web/pages/NACJD/about.html>.

⁸ See, <https://ccrc.dc.gov/publication/advisory-group-memo-40-statistics-district-adult-criminal-charges-and-convictions>.

⁹ Specifically, CCRC requested the minimum, 2.5th, 10th, 25, 50th, mean, 75th, 90th, 97.5th, and maximum quantiles.

whether there were multiple counts or multiple offenses for which the person was convicted. The CCRC's data scientist had completed an immense and unprecedented achievement in creating the first ever comprehensive analysis of nationwide sentencing practices and time served trends. These spreadsheets totaled tens of millions of cells. At this stage, all that remained was for NACJD to approve the CCRC's spreadsheets for public use.

Unfortunately, NACJD rejected the request to release these spreadsheets for publication.¹⁰ Initially, CCRC was told that NACJD reviews each output request *cell by cell* for potential disclosure risks and, since the CCRC's requested output had millions of cells, they lacked the capacity to review it. Even when CCRC provided the full R script that produced the tables and said that NACJD could review the script and rerun it to ensure no confidential information had been included, CCRC was told that would not satisfy the requirement for reviewing cell by cell.

NACJD's refusal to release these spreadsheets was a major and unforeseen setback for the CCRC. This was especially frustrating as the CCRC had clearly set forth its research and analysis goals in its original application for access to the data. However, the CCRC continued to work with NACJD to find compromises that would still allow the CCRC to obtain useful data for making penalty recommendations. Over the course of several months, the CCRC worked with NACJD to significantly streamline the data request to comply with NACJD's confidentiality concerns, and to reduce the scale of the request that was practical for NACJD to review. The initial spreadsheets produced by the CCRC would have had countless research applications, but the CCRC's primary goal was to ensure that its penalty recommendations are consistent with national trends. Accordingly, the CCRC prioritized obtaining data on the *longest* sentences imposed and *longest* amount of time served for serious offenses and commonly charged offenses across the nation, on a state and nationwide level. This data will ensure that any maximum sentences recommended by the CCRC are sufficiently severe to provide judges with discretion to impose even the longest sentences that are handed down both in the District and across the nation.

Ultimately, despite the setback, the CCRC has been successful in exporting an unprecedented analysis of sentencing and time served data from across the nation. As of this date, the CCRC has exported hundreds of graphs and charts that include detailed sentencing information from across the nation. Although the data collectively included in these graphs and charts is not as comprehensive as the initial multi-million cell spreadsheets created by the CCRC, they still represent an *unprecedented analysis* of sentencing practices across the nation. For example, the CCRC's analysis includes the 95th percentile sentence imposed and 95th percentile time served for 28 offenses, for the nation as a whole and on a state-by-state basis. For example, the CCRC's analysis allows for comparisons between the 95th percentile initial sentence and 95th percentile amount of time served for armed robbery across states. This analysis demonstrates both that there is enormous diversity of sentencing practices across states¹¹ and that in nearly all cases the

¹⁰ Upon getting permission to access the data, CCRC was restricted to working through a Virtual Data Enclave (VDE). In addition to some logistical challenges brought on by needing to access the data through a secondary platform, this setup means that NACJD must review each requested output and, once approved, email the table or chart to CCRC since CCRC cannot export anything from the VDE itself.

¹¹ For example, for the period between 2010-2019, the 95th percentile amount of time served for armed robbery was 216 months in Oklahoma and 54 months in Washington state.

proposed maximum sentences included in the RCCA were as long or *longer* than even than 95th percentile time served data.¹² The CCRC’s analysis also differentiates between cases in which the defendant was a first time offender or had prior or multiple convictions. This allows for a comparison of sentencing and time served trends in cases where the only conviction was the one listed (“pure” cases) and all cases together regardless of other factors that might have impacted sentencing.

The CCRC also analyzed changes in sentencing practices over time. For example, one chart that has been approved for release compares the 95th percentile time served based on the year of prison admission across three timepoints. This allows the CCRC to determine whether the lengthiest sentences imposed have changed over the prior 20 years.

Even with the setbacks faced during the prior fiscal year, the CCRC is immensely proud of the work completed by our data scientist, Margarita Bronshteyn, who has completed an unprecedented nationwide analysis of sentencing and time served practices. This analysis will be invaluable to the CCRC in making future penalty recommendations.

Data Analysis Work Thus Far in FY25 and Planned Projects

The CCRC has spent the early portion of FY25 preparing hundreds of new charts and graphs, which were approved by NACJD for public release. These new charts and graphs have been approved for release by NACJD, but there remains significant data analysis work to be completed throughout FY25.

First, the CCRC will continue to work with NACJD to obtain approval to release more data. Although the CCRC now has robust data on the *lengthiest* sentences, it may also be helpful to obtain data on the median and *shortest* sentences to get a clearer sense of overall sentencing practices across the nation. This may be especially helpful in informing discussions and recommendations related to mandatory minimum sentences.

Second, when the CCRC is ultimately satisfied with the scope of data analysis, the CCRC will publish a report summarizing its findings and discussing the research methodology in much greater detail.

Third, the CCRC has already obtained updated data on District sentencing practices from D.C. Superior Court. The CCRC’s prior analysis of District sentencing practices was limited to data from 2010-2019. The CCRC plans to update our prior analysis of District sentencing practices to include the years 2020-2022.

Lastly, this past summer the CCRC had held conversations with NACJD and BJS about the possibility of publishing the much larger and more detailed spreadsheets that the CCRC had already completed. NACJD and BJS still have significant concerns about releasing such a large data analysis publicly, but in principle were supportive of the CCRC’s effort. The CCRC hopes

¹² For example, the RCCA recommended a maximum sentence of 240 months for armed robbery. The 95th percentile time served for armed robbery in Alabama was just 176 months.

to continue this dialogue with NACJD and BJS to determine if there is any practicable way to publish these spreadsheets, or significant portions of them.

NEW CODE REVISION RECOMMENDATIONS

During FY24, the CCRC also issued new recommendations for code revision. This included recommendations to modernize existing statutes as well as creating an entirely new offense related to misuses of artificial intelligence.

Animal Cruelty Offenses

The CCRC issued recommendations for revisions to the animal cruelty cluster of offenses. Due to time constraints the CCRC had not included recommendations pertaining to animal cruelty offenses in its initial submission of code reform recommendations included in the RCCA.

The revisions to the animal cruelty cluster included new definitions and the following revised statutes:

- § 22A-5502. Animal Cruelty [Revises D.C. Code §§ 22-1001-1002]
- § 22A-5503. Criminal Neglect of an Animal. [Revises D.C. Code §§ 22-1001-1002, 22-1007, 22-1011-1012]
- § 22A-5504. Animal Fighting. [Revises D.C. Code §§ 22-1006.01, 22-1009, 22-1310]
- § 22A-5505. Attending or Wagering on an Animal Fight. [Revises D.C. Code § 22-1006.01]
- § 22A-5506. Possession of Implements of Animal Fighting. [Revises D.C. Code § 22-1006.02]
- § 22A-5507. Sexual Activity Between a Person and Animal. [Revises D.C. Code § 22-1012.01]
- § 22A-5508. Unlawful Cat Declawing. [Revises D.C. Code § 22-1012.0]
- § 22A-5509. Interference with a Police Animal. [Revises D.C. Code § 22-861]

The proposed revisions improve the clarity, organization, and proportionality of animal cruelty offenses. Among the major changes, the revised offenses specify requisite mental states for all elements of each offense, create new penalty grades, and re-organize offenses to improve proportionality. Under current law, animal cruelty includes both inflicting harm to animals and merely creating a *risk* of harm. The CCRC recommended re-organizing the offenses so that actual infliction of harm constitutes animal cruelty, whereas creating a risk of harm constitutes criminal neglect of an animal.

The animal cruelty offenses significantly clarify current statutes. For example, the recommended revised statutes clarify that causing “bodily injury” to an animal constitutes animal cruelty. For example, kicking a dog with enough force to cause bodily injury constitutes animal cruelty. Under current law, cruelty requires infliction of “torture” or “torment”¹³, or “unnecessary torture, suffering, or cruelty of any kind.”¹⁴ Although more severe forms of harms would likely constitute torture or torment, it is unclear whether infliction of minor bodily injury suffices. The recommended revisions clarify that this conduct constitutes cruelty and eliminates uncertainty and the possible need for costly litigation to determine whether kicking an animal qualifies as “torture” or “torment.”

The cruelty and neglect offenses also codify defenses and exclusions. Notably, the cruelty offense creates a defense if the defendant’s conduct is reasonable and is intended to safeguard an animal or end its suffering; if the conduct was lawful veterinary care; if the conduct was related to culinary purposes; or if the conduct was otherwise lawful, such as legal pest control services. The criminal neglect of an animal offense includes an exclusion if the creation of risk of harm was due to a reasonable refusal to obtain veterinary care. These defenses and exclusions will ensure that felony cruelty or neglect liability do not apply to reasonable conduct that nonetheless may inflict or create risk of harm to an animal.

Public Corruption Offenses

The CCRC submitted draft recommendations for revisions to a cluster of public corruption offenses. As with animal cruelty offenses, due to time constraints the CCRC had not included recommendations pertaining to public corruption offenses in its initial submission of code reform recommendations included in the RCCA.

The revisions to the public corruption cluster included new definitions and the following revised statutes:

- § 22A-4101. Bribery of a public servant. [Revises D.C. Code § 22-704 (Corrupt Influence); D.C. Code §§ 22-711 & 22-712 (Bribery)]
- § 22A-4102. Solicitation or acceptance of bribe by a public servant. [Revises D.C. Code § 22-704 (Corrupt Influence); D.C. Code §§ 22-711 & 22-712 (Bribery)]
- § 22A-4103. Unlawful compensation of public servant. [New offense addressing gap in D.C. Code § 22-704 (Corrupt Influence)]
- § 22A-4104. Solicitation or acceptance of unlawful compensation by public servant. [New offense addressing gap in D.C. Code § 22-704 (Corrupt Influence)]
- § 22A-4105. Misuse of official information. [New offense addressing gap in liability for misuse of official information by public servant]

¹³ D.C. Code § 22-1001.

¹⁴ D.C. Code § 22-1002.

- § 22A-4307. Threats and improper influence in public matters [New offense partially replaces D.C. Code § 22-851 (Protection of District Public Officials)]

The proposed revisions improve the clarity, organization, and proportionality of public corruption offenses. Among the major changes, the revised offenses specify requisite mental states for all elements of each offense and clarify the scope of conduct that is criminalized. The current statutes and relevant case law have possible gaps in law that would leave a range of wrongful conduct on behalf of public officials and parties that would seek to improperly influence public officials fully legal.

CCRC recommendations address gaps in law and ensure that certain forms of corrupt conduct are covered by the criminal code:

First, the CCRC’s recommendations clarify that most gratuities for public acts would be criminalized. Although current law covers *bribes*; i.e. payments or favors made in exchange for public acts, it is unclear if a *gratuity*; i.e. a payment made as compensation or gratuity for a public act without clear intent to influence the act is permitted. For example, if a councilmember amends a piece of legislation in a manner that financially benefits an individual, and that individual then makes a significant cash gift to that councilmember as reward for the amendment, it is unclear if this conduct is covered by current corruption statutes despite the harm to the public trust. The reasoning in the Supreme Court’s very recent decision in *Synder v. United States*, 603 U.S. 1 (2024) suggests that District bribery statutes would not cover unlawful gratuities. The CCRC’s recommendations clarify that this type of non-trivial remuneration without a *quid pro quo* element constitutes public corruption.

Second, the CCRC’s recommendations ensure that misuse of official information for personal gain—analogue to insider trading—is criminalized. For example, if a public official knows that a parcel of land will be rezoned for commercial purposes, thereby increasing the land’s value, and before that information becomes public the official purchases the land for profit, it is unclear whether current public corruption offenses would criminalize this conduct. The CCRC’s recommendations clarify that this type of wrongful use of official information constitutes a public corruption offense.

The CCRC’s recommendations clarify the *mens rea* and *actus reus* requirements for public corruption offenses. Notably, the CCRC’s revised statutes do not rely on the vague requirement that the defendant act “corruptly” and instead clarify the requirements for a *quid pro quo*, and clarify types of *lawful* contributions that person can make, or that a public official may receive. For example, if a campaign donor makes a large campaign contribution to a public official in expectation that the contribution will encourage the official to enact policies that are financially beneficial to the donor, does this constitute “corruptly” providing a benefit “with intent to influence such official’s action on any matter”?¹⁵ It is unclear under current law whether this conduct would fall under the bribery statute. In contrast, the CCRC’s recommended revisions codify an explicit *quid pro quo* requirement, and clarify that bribery requires intent that the contribution be made

¹⁵ D.C. Code § 22-704(a).

with intent that it be “*in exchange*” for a clear and unambiguous promise with respect to a public act. This change addresses the First Amendment issues surrounding campaign contributions.

The CCRC’s recommendations would significantly clarify the scope of corrupt conduct that is criminalized under the law. This will not only ensure that certain forms of corrupt conduct are covered by the D.C. Code but will also provide much clearer guidance to both officials and members of the public as to which forms of conduct are criminalized and which are legal.

Nonconsensual Distribution of Artificial Intelligence Created “Deepfakes”

The CCRC drafted a novel offense that would close a major gap in current law to address wrongful uses of artificial intelligence (“AI”). Under current law, there is no criminal offense that directly criminalizes distributing nude or sexually explicit images or video created by artificial intelligence without the consent of the person depicted. In some scenarios, this conduct could constitute a form of stalking, but only if the distributions form a “course of conduct.”¹⁶ A singular distribution of an AI image or video may not satisfy the requirements under the stalking statute. Alternatively, there may be *civil* remedies, such as lawsuits for defamation or intentional infliction of emotional distress, but these remedies do not carry the force of criminal law and are often ineffectual if defendants lack the financial wherewithal to pay appropriate damages.

The CCRC drafted a novel nonconsensual distribution of false sexual imagery offense and submitted it to the JPS committee for its consideration. This new offense makes it a crime to display or distribute any image or video that depicts a person’s nude genitals or anus; the complainant’s nude or undergarment-clad pubic area; buttocks, or female breast below the top of the areola; or an image or an audio recording of the complainant engaging in or submitting to a sexual act, masturbation, or sadomasochistic abuse. The offense also requires that the image, video, or audio be displayed or distributed without the depicted person’s effective consent, and that the defendant had intent to alarm or sexually abuse, humiliate, harass, or degrade the complainant; sexually arouse or gratify any person; or receive financial gain as a result of the distribution or display. Lastly, the offense requires that the person depicted be identifiable from the image, video, or audio itself. The offense also includes penalty enhancements for repeat offenders, or when the person depicted is under the age of 18.

At this time the CCRC has not recommend novel offenses to criminalize other wrongful uses of artificial intelligence. Although there may be unforeseeable novel wrongful uses of artificial intelligence, at present there are at least three broad classes of wrongful uses of AI beyond nonconsensual distribution of sexually explicit material. AI can be used for: 1) fraud (e.g., using AI to create a realistic simulation of a person’s voice or likeness to deceive another into paying money); 2) extortion (e.g., using AI to create a realistic simulation of a person’s voice or likeness to make someone fear for that person’s safety in order to extract a ransom payment); and 3) use of AI to disseminate false information for political purposes (e.g. using AI to create a realistic depiction of a public figure saying something politically harmful).

¹⁶ D.C. Code § 22–3133.

Using AI for purposes of fraud or extortion is already criminalized under current law. While AI may allow for particularly convincing deceptions, the current fraud, extortion, and blackmail statutes already criminalize use of AI for these purposes. Absent a clear need for new offenses, or to revised fraud, extortion, or blackmail statutes to account for uses of AI, at this time the CCRC does not recommend changes to these offenses.

Current law does not criminalize use of AI to disseminate false speech for political purposes. Using misinformation for political purposes long predates the advent of AI, and politicians and the public alike have long relied on the marketplace of ideas to sort out fact from fiction. While AI presents the potential for exacerbating misinformation, criminalizing false speech also creates enormous and serious free speech concerns. While significant abuses may arise in the future, at this time the CCRC does not recommend criminalizing false speech due to the grave free speech concerns involved. However, if abuses of AI for political purposes increase in frequency or severity in coming years, the CCRC may reassess its position.

ONGOING CODE REVISION PROJECTS

The CCRC also has ongoing projects that began in FY24 that have continued into FY25.

Environmental offenses

The CCRC is revising anti-dumping criminal offenses under Title 8. The CCRC is seeking to revise the main anti-dumping offense to include clearly defined elements and mental states, while also clearly including employers and managers to do not dump waste themselves but permit their employees or subordinates to do so.

Private Corruption

Although the CCRC has submitted revised statutory text for *public* corruption offenses, it is still reviewing and drafting recommendations related to *private* corruption. For example, improperly influencing an auditor or arbitrator does not fall within the scope of public corruption offenses. The CCRC is continuing to work on providing recommendations to address private corruption.

Traffic Offenses in Title 50

The CCRC has begun a preliminary review of traffic offenses under Title 50, and plans to continue to review and begin drafting recommendations for revisions in FY25.

Gang Related Offenses

Due to time constraints the CCRC did not issue recommendations for revisions to gang related offenses in Title 22, Chapter 9B. In FY25 the CCRC plans to begin reviewing these statutes and issue recommendations for revisions.

Mental Incapacity Evidence in Criminal Trials

The CCRC is currently reviewing and considering issuing recommendations related to the use of mental illness or mental incapacity evidence in criminal trials for the purposes of casting doubt on whether a defendant had a required mental state for an offense. Under current law, a person *can* introduce evidence of self-induced intoxication to cast doubt on whether they had a required mental state, but *cannot* introduce evidence of mental illness or incapacity for the same purpose.¹⁷ For example, theft requires that the defendant knew he was taking property of another; if a person was genuinely mistaken and believed the property was his, then he is not guilty of theft. Under current law, a person is permitted to introduce evidence of his intoxication to cast doubt as to whether he knew that the property taken belonged to another person. However, a person is *not* permitted to introduce evidence that he suffers from a severe mental illness or brain injury that would cast doubt as to whether he knew that the property belonged to another person. The District is an outlier nationally in this evidentiary rule, and given the prevalence of mental health issues among criminal defendants, it may produce a significant number of unjust outcomes in which a person is convicted of a crime even when he lacked a required mental state due to mental illness or incapacity outside of his control. The CCRC is continuing to review relevant legal authorities in other jurisdictions, federal case law, and legal academic writing on this topic as it prepares to issue revision recommendations.

CONCLUSION

This concludes the CCRC's report of activities for FY24 and in early FY25. The CCRC remains eager to continue the important work of continually improving the criminal laws of the District, and assisting the Council in drafting any new statutory language.

¹⁷ *Bethea v. United States*, 365 A.2d 64 (D.C. 1976).