



D.C. CRIMINAL CODE REFORM COMMISSION
2024 PERFORMANCE OVERSIGHT HEARING
TESTIMONY OF EXECUTIVE DIRECTOR
JINWOO PARK

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY HEARING
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
441 FOURTH STREET, NW SUITE 1C001 SOUTH
WASHINGTON, DC 20001
PHONE: (202) 442-8715

Good morning, Chairwoman Pinto. Thank you for holding this oversight hearing on the D.C. Criminal Code Reform Commission (“CCRC”). I am Jinwoo Park, the agency’s Executive Director. The prior twelve months since the time I testified at the last performance oversight hearing before this Committee have been challenging to say the least, but I am still very proud of the work the CCRC has performed and the contributions we have made to the criminal code in that time.

It was less than one year ago that President Biden signed Joint House Resolution 26, which prevented the Revised Criminal Code Act (“RCCA”) from going into effect and marked the first time in more than thirty years in which the Federal government directly blocked a piece of District legislation. This act had an immense effect on the CCRC’s operations over the remainder of FY23 and in FY24 to date. I will discuss the work that the CCRC engaged in over that time, how we have continued to move forward with code reform efforts, and how the lack of a modernized criminal code has continued to affect the District.

I had expected that a significant portion of the agency’s work in FY23 and FY24 would involve assisting other agencies and stakeholders in implementing the RCCA. Of course, due to the intervention by the Federal government, those efforts have not moved forward. However, the CCRC has still been engaged in work to further the agency’s code reform mission.

First, the agency has continued to revise clusters of offenses that were not included in the RCCA. Even had the RCCA not been struck down, the CCRC had planned to revise these offenses prior to the RCCA’s planned applicability date of October 1, 2025. The CCRC has issued a first draft of revisions to animal cruelty offenses and is continuing to research and produce recommendations related to public corruption and bribery offenses. In addition, in response to novel conduct that may not be adequately addressed by current law, the CCRC has also begun researching and formulating recommendations related to abuses of artificial intelligence. I expect that over the remainder of FY24, the CCRC will produce additional recommendations related to public corruption and bribery, artificial intelligence, and potentially traffic offenses under Title 50.

Second, the CCRC has undertaken research efforts to determine both statutorily authorized penalties for serious offenses nationwide and actual sentencing practices nationwide. As I noted in my written responses to this Committee’s pre-hearing questions, I believe a main reason Congress and the President struck down the RCCA was a false perception that the bill was radically lenient. We’ve made clear that the penalties included in the RCCA are fully consistent with current District sentencing norms: in virtually all cases, the maximum sentences provided under the RCCA are as high or higher than even the longest sentences imposed under current law. The CCRC has undertaken two major research projects to demonstrate that the RCCA is also consistent with *national* norms.

The CCRC has been thoroughly researching maximum sentences allowable across all 50 states for several serious offenses. Because each state’s code is complex with its own set of sentencing rules

and penalty enhancements, this has been a time consuming task. But having concrete research to demonstrate that the RCCA's penalties are squarely within national norms may help address misconceptions that the RCCA is unusually lenient.

The CCRC has also been researching actual sentencing practices across the nation. The RCCA's penalties are consistent with current sentencing practices in the District, but without robust nationwide data it is unclear how they compare to national sentencing norms. At the House Judiciary subcommittee hearing held on October 13, 2023, a witness claimed that "the judges in the D.C. Superior Court have eroded accountability in the criminal justice system by their notoriously light sentences across all categories of crime[.]"¹ However, the witness provided no data to support this claim. Based on our research, there is surprisingly little in the way of publicly available data on national sentencing norms. The CCRC was able to obtain access to data from the National Corrections Reporting Program's Prison Term Record File. This file includes sentencing data from nearly 14 million cases compiled over prior decades from a majority of states. The data includes both the initial sentence imposed, as well as prison admission and release dates which can be used to determine the actual amount of time served in each case. This admission and release data is especially important as the District does not have a parole system and in most cases there is no mechanism sentence modification. When comparing District sentences to other jurisdictions, it is therefore vital to determine the amount of time *actually served*, as persons convicted elsewhere are often eligible for early release. The CCRC is currently analyzing this data, but when the analysis is complete the CCRC will be able to provide extremely detailed analysis of actual sentencing practices from across the nation.

Although both research projects are still underway, preliminary results indicate that the RCCA's penalties and current District sentencing practices are well within national norms.

The CCRC did not produce a report of charging and sentencing trends from 2020 and 2022 as expected due to delays in receiving data from D.C. Superior Court. Under the Data Use Agreement between the CCRC and D.C. Superior Court, the Court has provided an enormous data set to the CCRC, with comprehensive charging and sentencing data for adult cases for the years 2010-2019. In the summer of 2022, the CCRC requested updated data for years 2020 and 2021, and the Court had indicated that it would send us the data by the late summer or early fall of 2022. The Court recently sent the CCRC partially updated data in November of 2023. We are still awaiting a complete update, after which the CCRC can begin updating its analysis of D.C. sentencing trends to include data from these more recent years.

The largest change in the CCRC's work in FY23 and FY24 to date as compared to prior years has been a much greater involvement in providing testimony before the Council related to pending criminal legislation. In prior years the CCRC was focused more heavily on drafting the revised criminal code and would only occasionally provide testimony. From 2016 to 2022, the CCRC

¹ Testimony of Charles Stimson at 32:04. <https://www.c-span.org/video/?531032-1/house-judiciary-subcommittee-hearing-violent-crime-washington-dc>

provided testimony on pending legislation ten times. By contrast in the roughly nine months spanning the second half of FY23 and FY24 to date, the CCRC has provided testimony on eight separate pieces of legislation.² In addition, the CCRC has worked with Council staffers, including staff of this Committee, to aid in drafting and revising legislation that is now pending before the Council. This has included answering questions about current law, providing legal analysis of provisions included in pending legislation, and providing proposed draft amendments and language changes to pending legislation.

Finally, I would like to take the opportunity to highlight many ways in which the CCRC's work throughout the second half of FY23 and FY24 to date further demonstrates the ongoing need for comprehensive criminal code revision. The various pieces of criminal legislation upon which the CCRC provided testimony often included sensible ideas that had already been included under the RCCA. This includes creating a new felony offense of reckless endangerment with a firearm; increasing penalties for possession of certain highly dangerous firearms, such as ghost guns and automatic weapons; treating strangulation as a felony offense; updating sex offenses to ensure that contractors and volunteers in schools can be held liable for sexual conduct with students; and many others. While these changes were important and worthwhile, they represent just a tiny fraction of the improvements that had been made in the RCCA. Often, the CCRC would recommend a change to draft language but note that while it addressed one problem, several related problems went unaddressed. In other instances, revising current statutes to achieve a desired policy outcome was needlessly difficult because the current code does not have a General Part with its large glossary of defined terms and generally applicable defenses and rules.

The D.C. Court of Appeals has continued to grapple with basic issues of law that would have been resolved by the RCCA. For example, in November of last year, the DCCA issued a decision in *Bruce v. United States*³, a case in which the defendant had been convicted of possession of a high capacity ammunition device. The current statute does not specify any culpable mental state, that is, whether any degree of awareness is required as to the capacity of the ammunition device. Because the code is silent on this basic issue, DCCA judges had to perform what is essentially a legislative function in specifying a mental state. The DCCA ultimately decided that the defendant must know the capacity of the ammunition device and reversed the conviction. The RCCA clearly specified a mental state for this element under the analogous offense and made clear that the defendant did not have to know the exact capacity of the ammunition device. The lack of a revised code needlessly consumed time and resources of the court, the defense bar, and the U.S. Attorney's

² The CCRC provided oral and written testimony at the following hearings:

May 17, 2023 Hearing on B25-0041, the "Forbid Lewd Activity and Sexual Harassment Act of 2023"; June 27, 2023 Hearing on B25-0291, the "Stronger Safer Amendment Act of 2023"; June 27, 2023 Hearing on B25-0247, the "Female Genital Mutilation Prohibition Act of 2023"; September 18, 2023 Hearing on B25-0345, the "Accountability and Victim Protection Amendment Act of 2023"; October 4, 2023 Hearing on B25-0421, the "License Suspension Reform Amendment Act of 2023" and B25-0425; October 4, 2023 "Strengthening Traffic Enforcement, Education, and Responsibility ("STEER") Amendment Act of 2023"; November 8, 2023 Hearing on B25-0479, the "Addressing Crime through Targeted Interventions and Violence Enforcement ("ACTIVE") Amendment Act of 2023; November 29, 2023 Hearing on B25-0555, the "Addressing Crime Trends (ACT) Now Amendment Act of 2023."

³ 305 A.3d 381 (D.C. 2023).

office. The result of the time and resources spent was an outcome that was at odds with the policy adopted by the Council in the RCCA and in the Secure DC bill and led to conviction being reversed. We have seen this time and again, and it will undoubtedly continue until the District adopts a revised criminal code.

More recently I have received several questions from your staff about specific issues in Secure DC that would have been resolved by the RCCA. For example, when can consent operate as a defense to the newly proposed strangulation offense? Does carjacking liability apply if a person uses force to take his own car that he co-owns with another person? Does carjacking liability apply if a person uses force to take a car after it has been re-possessed? These are important questions, and I applaud your staff for taking the effort to do this detailed work, but the RCCA had already addressed these issues. And while I look forward to working with your team to ensure these issues are properly addressed in Secure DC, they leave countless other issues unaddressed. We may clarify the role of consent with strangulation but left unresolved is how consent applies to other assault offenses. Within the scope of assault, there are numerous important unresolved issues: what degree of force may a victim of a home invasion use to defend themselves or their family members?; can a person fearing inevitable but non-imminent harm use force to defend themselves?; what degree of force can a person use to defend themselves against sexual assault? These are important questions of law that may often determine whether *victims* of crime may themselves be subject to criminal prosecution. Piecemeal revisions are worthwhile but cannot address the overwhelming scope of flaws in the current code.

The past twelve months has been a deeply challenging period for the District resulting in several attempts to address the acute crime crisis affecting our city. Given those challenges, I understand why revisiting the RCCA has not been this Committee's focus. But the enormous structural flaws that the RCCA would have fixed remain in place, and they will continue to undermine public safety and consume scarce resources, while failing to prove the basic level of good governance that District residents deserve. I still believe deeply in the need for comprehensive criminal code modernization, and that this Council can pass a version of the bill that will garner broad support within the District while surviving scrutiny by the Federal government. I included more detailed thoughts on this issue in my written responses to pre-hearing questions that I submitted to this Committee last week.

To conclude, I want to thank you, Chairwoman Pinto for holding this hearing. I look forward to working with you and your staff in the coming years to make our criminal justice system more effective, more transparent, and more just, while ensuring the safety of all District residents.

I look forward to addressing the questions you have.