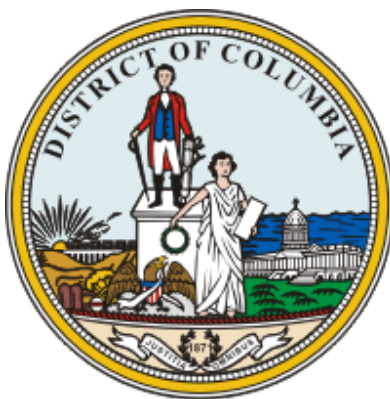




DISTRICT OF COLUMBIA CRIMINAL CODE REFORM
COMMISSION

2016 ANNUAL REPORT*



February 9, 2017

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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*This document also serves as the agency's report on activities for the quarter that ended Dec. 30, 2016.

INTRODUCTION

The D.C. Criminal Code Reform Commission (CCRC) is pleased to present its Annual Report for calendar year 2016, in compliance with its statutory mandate.¹ To avoid unnecessary duplication, this Annual Report also serves as the agency's quarterly report on activities for the fiscal year 2017 quarter that ended on December 30, 2016.²

The CCRC began operation as a new, independent District agency on October 1, 2016, pursuant to language in the Council of the District of Columbia's Fiscal Year 2017 Budget Support Act of 2016. The CCRC is tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes within specified parameters, with a statutory deadline of October 1, 2018.³ In preparing these reform recommendations, the CCRC is required to consult with a Code Revision Advisory Group, a statutorily designated group of stakeholders who review and provide information and suggestions on proposals prepared by the CCRC. The Advisory Group consists of 5 voting members and 2 nonvoting members.⁴ A majority vote of the Advisory Group is required for any

¹ The CCRC's statutory mandate for an annual report requires that:

The Commission shall file an annual report with the Council before March 31 of each year that includes: (1) A summary and copy of all recommendations for reforms to criminal statutes developed by the Commission during the previous calendar year; (2) A summary and copy of comments received from the Advisory Group during the previous calendar year and their disposition; (3) A summary of other Commission activities during the previous calendar year; (4) A description of any problems discovered with prior Commission work or changes to prior work that are necessary due to legislative changes or court rulings; (5) A description of any issues that could delay or prevent the Commission from timely fulfilling its statutory duties; and (6) A work plan and schedule, or revisions to an existing work plan and schedule, for carrying out the responsibilities of the Commission to meet statutory requirements.

D.C. Code § 3-154(b).

² The CCRC's statutory mandate for quarterly reports states that: "The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter." D.C. Code § 3-154(a).

³ The CCRC's mandate states:

By October 1, 2018, the Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to: (1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses; (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary; and (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

D.C. Code § 3-152(a).

⁴ The current voting members of the Advisory Group are: Don Braman, Associate Professor of Law, George Washington University School of Law (Council Appointee); Paul Butler, Professor of Law, Georgetown University Law Center (Council Appointee); Renata Kendrick Cooper, Special Counsel for Policy and Legislative Affairs, United States Attorney's Office for the District of Columbia (Designee of the United States Attorney for the District of Columbia); Laura Hankins, General Counsel, Public Defender Service for the District of Columbia (Designee of the Director of the Public Defender Service for the District of Columbia); and Dave Rosenthal, Senior Assistant Attorney General, Office of the Attorney General (Designee of the Attorney General for the District of Columbia). The current non-voting members of the Advisory Group are: Chanell Autrey, Legislative Counsel, Committee on the Judiciary (Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety); and Helder

recommendations to be submitted to the Council and the Mayor.⁵ In preparing its reform recommendations the CCRC also reviews criminal code reforms in other jurisdictions, changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.⁶

This Annual Report is divided into six sections, each corresponding to one of the CCRC's statutory requirements for its Annual Report.⁷

I. RECOMMENDATIONS FOR REFORMS TO CRIMINAL STATUTES

The CCRC began operations on October 1, 2016 and, to date, no reform recommendations have been finalized. However, several draft recommendations were developed and submitted to the Advisory Group for its review and comment in the following reports:

1. **Report #1:** *Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes.*
 - a. **Summary of Draft Recommendations:** The draft recommendations in Report #1 address several of the agency's statutory mandates that require minor, often technical changes to District criminal statutes.⁸ Report #1 includes a draft bill that: 1) Repeals archaic and unused offenses; 2) Makes technical amendments to correct outdated language; 3) Amends statutes that have been held to be unconstitutional; 4) Identifies and repeals common law offenses; 5) Identifies statutes in Title 22 for relocation to other titles of the code; and 6) Enacts Title 22. Report #1 and its appendices summarize these revisions and contain relevant charging and sentencing statistics.
 - b. **Status of Advisory Group Comments:** The Advisory Group was given a first draft of Report #1 and accompanying appendices on November 2, 2016, with a request for comments on or by January 13, 2017. Three members submitted comments on the first draft, which were reviewed and used as the basis for a second draft that was given to the Advisory Group on January 25, 2017, with a request for comments on or by February 27, 2017. The Advisory Group's written comments are summarized below, in Section II of this Annual Report, and are reproduced in the attached Appendix A.
2. **Report #2:** *Recommendations for Chapter 2 of the Revised Criminal Code—Basic Requirements of Offense Liability*

Gil, Legislative and Policy Advisory, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

⁵ Criminal Code Reform Commission Establishment Act of 2016, Bill 21-669, Section 3123, Fiscal Year 2017 Budget Support Act of 2016 (June 21, 2016).

⁶ *Id.*

⁷ See *supra* note 1.

D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (5) Eliminate archaic and unused offenses; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary . . .”).

- a. **Summary of Draft Recommendations:** Report #2 presents a set of general provisions that are intended to comprise the heart of the chapter on the basic requirements of offense liability incorporated into the Revised Criminal Code. These include general provisions establishing a voluntariness requirement, a causation requirement, a culpable mental state requirement, a hierarchy of culpable mental states, and rules of interpretation applicable to the culpable mental state requirement. The proposed general provisions broadly reflect the culpability scheme initially developed by the drafters of the Model Penal Code and thereafter adopted by the vast majority of states that undertook a comprehensive code revision project.
- b. **Status of Advisory Group Comments:** The Advisory Group was given a first draft of Report #2 on December 21, 2016, with a request for comments on or by, February 22, 2017. To date, no comments have been received.

Copies of the full drafts of Report #1 (several hundred pages in length) and Report #2 are available on the CCRC website at <https://ccrc.dc.gov/page/ccrc-documents>.

II. WRITTEN COMMENTS RECEIVED FROM THE ADVISORY GROUP

To date, the CCRC has received written comments from the Advisory Group on the first draft of *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes*. Those written comments are summarized here and reproduced in the attached Appendix A, along with the memorandum the CCRC provided to the Advisory Group addressing their comments.

The CCRC timely received written comments from the Office of the Attorney General for the District of Columbia (OAG), the U.S. Attorney's Office for the District of Columbia (USAO), and the Public Defender Service for the District of Columbia (PDS). The majority of the comments suggested clarifications to the wording of the Report or additional technical amendments to criminal statutes, and the CCRC made the suggested changes in the second draft of Report #1 and its accompanying appendices. Several Advisory Group written comments raised substantive questions regarding: 1) the effect of repealing several archaic and unused property damage offenses on the scope of the remaining property offenses; 2) the effect of enactment on court decisions construing the laws contained in Title 22; 3) whether the District of Columbia Court of Appeals would consider legislative intent in conducting statutory interpretation of an enacted title; and 4) how best to establish the legislative intent behind enacting Title 22.

The CCRC addressed the concern about the effect of repealing several property damage offenses by removing those offenses from the Report and the draft legislation. Those offenses are no longer recommended for repeal as part of this enactment legislation and will be discussed in conjunction with more comprehensive of the District's property offenses (see Work Plan and Schedule in Part VI of this Annual Report). To address the concern about the effect of enactment on court decisions interpreting the laws contained in Title 22, the CCRC added additional language to the Statement of Legislative Intent contained in the prefatory section of the enactment bill that states that enactment is not intended to indicate legislative approval or

disapproval of any court decisions interpreting the laws therein. Regarding the relevant canons of statutory construction that the District of Columbia Court of Appeals could use to determine legislative intent, the CCRC added text to the Report noting recent trends in the case law.

Finally, at its most recent meeting on February 1, 2017, the CCRC presented to the Advisory Group a possible drafting option to address a member's request to codify a statement of legislative intent. The member that raised this concern was not able to be present at the Advisory Group meeting, however. After discussion, the Advisory Group agreed to defer action on Report #1 and the accompanying appendices until the member could be further consulted.

III. COMMISSION ACTIVITIES

The Work Plan and Schedule in Part VI of this Annual Report divide the development of code reform recommendations under the CCRC's statutory mandate into four Phases. The CCRC's activities since beginning operation on October 1, 2016, have focused on completing Phase 1 and beginning Phase 2.

The CCRC's first major report to the Council and Mayor will provide the recommendations developed in Phase 1. Work for this phase addresses several of the agency's statutory mandates that require minor, often technical changes to District criminal statutes.⁹ Appendices to the report will include: A) detailed information on affected statutes; B) Advisory Group comments; C) relevant crime statistics; and D) an appendix containing a draft bill that would enact the proposed changes into law. As is discussed further in Part II of this Annual Report, above, to date the CCRC has received written comments from several members of the Advisory Group and presented a second draft of the Report and accompanying appendices for its consideration. A final draft and Advisory Group vote on the report containing Phase 1 recommendations is expected in April or May 2017.

The recommendations developed in Phases 2, 3, and 4 will be combined, forming a single, cohesive set of reformed crimes in a new Title 22A. The combined reform recommendations will be presented in the CCRC's second (and final) major report to the Council and Mayor by the statutory deadline of September 30, 2018.

The CCRC is currently working on Phase 2. Work for this phase addresses several of the agency's statutory mandates.¹⁰ The CCRC has drafted recommendations for a set of general provisions that are intended to comprise the heart of the chapter on the basic requirements of offense liability incorporated into the Revised Criminal Code. These include general provisions establishing a voluntariness requirement, a causation requirement, a culpable mental state

⁹ D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (5) Eliminate archaic and unused offenses; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary . . .”).

¹⁰ D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (7) Organize existing criminal statutes in a logical order; (10) Propose such other amendments as the Commission believes are necessary . . .”).

requirement, a hierarchy of culpable mental states, and rules of interpretation applicable to the culpable mental state requirement. As discussed in Part II of this Annual Report, above, the CCRC is currently awaiting comments from the Advisory Group on these recommendations in Report #2, with a deadline of February 22, 2017.

Finally, since beginning operation on October 1, 2016, the CCRC has worked to establish internal operations and policies for leave and communications, as well as developed relationships with outside parties necessary for the functioning of the agency, such as DGS, DCHR, OCTO, OCFO, OBP, etc. The CCRC is also working to comply with District laws and regulations on ethics, document retention, the Freedom of Information Act, and Open Meetings Act. To the best of its knowledge, the CCRC is in compliance at present with all applicable laws and regulations. The CCRC has also developed a website that posts all the materials circulated to the Advisory Group, such as draft reports with recommendations for criminal code reform and legal research memoranda, solicits public comments on the CCRC's draft reports, and provides staff names and contact information for the CCRC.

IV. STATUS OF PRIOR COMMISSION WORK

The CCRC began operation on October 1, 2016, and, as such, has no prior work.

V. POTENTIAL ISSUES AFFECTING COMMISSION WORK

Since its inception on October 1, 2016, the agency has encountered two main issues that could delay or prevent the Commission from timely fulfilling its statutory duties:

First, the agency faces challenges to appropriately prioritize criminal statutes for reform. The CCRC's statutory mandate refers generally to the development of comprehensive criminal code reform recommendations for District criminal statutes. However, the D.C. Code contains, by CCRC estimates, at least 700 distinct criminal offenses and reforming all these statutes is not feasible within the agency's two-year timeframe with current staffing levels. Moreover, unlike most jurisdictions that have modernized their criminal codes in recent decades, the District's criminal code does not include general defenses (e.g. self-defense). General defenses greatly affect how criminal statutes are used and would normally be addressed as part of a comprehensive reform of a criminal code. Nevertheless, given the current two-year window and staffing levels of the CCRC, codification of general defenses is not practically achievable.

Given the scope of criminal statutes potentially needing reform, the CCRC has prioritized reform of the most serious or frequently-sentenced District crimes. As described more fully in the Work Plan and Schedule in Part VI of this Annual Report, below, the CCRC expects to develop reform recommendations for the offenses that constitute over 95% of annual felony convictions and over 60% of annual misdemeanor convictions, weapon possession crimes excluded. General defenses are not addressed in the Work Plan. This approach will yield a logically coherent set of reforms that would be a model for further work, should it be authorized. At the end of FY 17, the CCRC will reassess the feasibility of the scope of its work plan and make adjustments as necessary.

Second, the agency has encountered difficulty in the acquisition and analysis of charging data, sentencing data, and other relevant information. The CCRC's statutory mandate specifically requires the agency to provide statistical information with its recommendations for code reform. The CCRC's statute also requires the agency to develop recommendations to improve the proportionality of criminal penalties and the gradation of offenses, tasks which depend heavily on statistical information about current District charging and sentencing practices. However, the CCRC does not itself have access to the necessary statistical information, nor does its staff include experts in data analysis.

To address this issue, in October 2016 the CCRC requested relevant de-identified (non-confidential) statistical information from the D.C. Sentencing Commission. In January 2017 the D.C. Sentencing Commission provided some, but not all, of the requested information. In the remainder of FY 17, the CCRC will continue to seek statistical information, from other sources if necessary.

In October 2016 the CCRC also contacted the Lab in the Office of the City Administrator provide data analysis expertise for statistical information that is obtained, and subsequently reached a preliminary agreement with the Lab to do so. In the remainder of FY 17, the CCRC will finalize a memorandum of understanding (MOU) with the Lab and work with it to produce necessary statistical information and analysis from available data.

The Work Plan and Schedule in Part VI of this Annual Report, below, also has a section discussing potential "Limitations & Assumptions" that provide further detail on factors that may affect the CCRC's ability to timely fulfill its statutory mandate.

VI. WORK PLAN AND SCHEDULE FOR COMMISSION WORK

This combined Work Plan & Schedule presents the planned activities of the D.C. Criminal Code Reform Commission (CCRC) during its two-year statutory authorization (October 1, 2016 through September 30, 2018). The Work Plan & Schedule guides agency operations, subject to changes by the CCRC Executive Director to better meet the CCRC's statutory mandate with available resources. Notice of any significant changes to the Work Plan & Schedule will be given to the CCRC's Criminal Code Revision Advisory Group (Advisory Group), and described in the CCRC's quarterly and annual reports to the Council.

This Work Plan & Schedule consists of the following parts:

- I. Overview.
- II. Limitations & Assumptions.
- III. Sequence of Code Reform Recommendations.
- IV. Ongoing Activities Supporting the Development of Recommendations.
- V. Schedule.

I. Overview.

The Work Plan addresses all aspects of the CCRC's core statutory mandate to develop comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to:

- (1) Use clear and plain language;
- (2) Apply consistent, clearly articulated definitions;
- (3) Describe all elements, including mental states, that must be proven;
- (4) Reduce unnecessary overlap and gaps between criminal offenses;
- (5) Eliminate archaic and unused offenses;
- (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties;
- (7) Organize existing criminal statutes in a logical order;
- (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
- (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment;
- (10) Propose such other amendments as the Commission believes are necessary; and
- (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.¹¹

Under the Work Plan, the CCRC will produce two major reports for the Council and Mayor that provide recommendations for criminal code reform.

The CCRC's first major report, to be issued mid-2017, will provide recommendations for enactment of D.C. Code Title 22 and other, mostly technical, changes to criminal statutes. It will also include draft legislation for implementing the CCRC's recommendations.

The CCRC's second major report, to be issued by the statutory deadline of September 30, 2018, will provide recommendations for reform of the most serious, routinely sentenced District offenses currently in use.¹² The report will recommend that reformed offenses be enacted chiefly in a new Title 22A, with unreformed offenses remaining in their current locations in other titles.

Consistent with the past six decades of modern American criminal code reform efforts, the new Title 22A will consist of two distinct components.¹³ First, Title 22A will contain a "General Part," which provides a legislative statement of the key general definitions, essential interpretive rules, and most important culpability principles applicable to all reformed offenses, as well as a coherent classification scheme for grading reformed offenses. Second, Title 22A will contain a "Special Part," which codifies clearly articulated reformed versions of individual offenses.

¹¹ D.C. Code § 3-151 *et seq.*

¹² The offenses that will be reformed, per this Work Plan, constitute over 95% of annual adult felony convictions and over 60% of annual adult misdemeanor convictions, weapon possession crimes excluded.

¹³ For a brief summary of the history of modern American criminal code reform efforts, see CCRC Memorandum No. 2, *Adoption of a Comprehensive General Part in the Revised Criminal Code* (December 21, 2016).

When viewed collectively, the new Title 22A will provide a full and accurate statutory description of the elements for every reformed offense.

The second report will also include draft legislation for implementing the CCRC's recommendations, as well as a concise commentary (suitable for adoption as legislative history) that explains how and why the reformed statutes change existing District law, and charging, sentencing, and other relevant statistics regarding affected offenses.

In preparing its reform recommendations for both major reports, the CCRC will consult with its statutorily-created Advisory Group. The Advisory Group will review, comment, and ultimately vote on all CCRC recommendations that go to the Council and Mayor. The final recommendations in both major reports will be based on the Advisory Group's comments, and a copy of those comments will be appended to the reports. In preparing its reform recommendations, the CCRC also will review criminal code reforms in other jurisdictions, recommend changes to criminal offenses by the American Law Institute, and survey best practices recommended by criminal law experts.

The "Sequence of Code Reform Recommendations" section of the Work Plan provides details of the components and steps involved in producing these two major reports to the Council and Mayor. The "Other Ongoing Activities" section of the Work Plan describes CCRC activities that support the development of specific code reform recommendations.

The Schedule for agency work tracks the work plan, focusing on key points in the production of the agency's two major reports. Because there may be multiple drafts of any CCRC recommendation, depending on the nature and extent of the Advisory Group's comments, the Schedule reflects only the overall sequence and key deadlines for issuing draft recommendations to the Advisory Group and final recommendations to the Council and Mayor.

II. Limitations & Assumptions.

The scope of the Work Plan is limited in two major ways, both of which are a product of current time and resource constraints. First, the Work Plan excludes reform recommendations for many of the more than 700 criminal statutes scattered throughout the D.C. Code.¹⁴ The vast majority of the criminal statutes not addressed in the Work Plan are of a regulatory nature, impose misdemeanor penalties, or do not appear to have been sentenced in recent years (or ever). However, there are also some serious, frequently-sentenced District offenses currently in use that are excluded, such as firearm registration and firearm possession crimes. Second, the Work Plan does not cover reform recommendations for codifying, clarifying, or filling in District case law governing general defenses. Codification of general defenses—e.g., self-defense—is a standard component of modern criminal codes, and greatly affects how criminal statutes are used. Nevertheless, given the current two-year window and staffing levels of the CCRC, codification of general defenses or key weapons offenses is not practically achievable.

The feasibility of the Work Plan & Schedule assumes that CCRC assessments are approximately correct regarding the following variables:

¹⁴ This estimate is based on an internal review by CCRC staff of the D.C. Code.

- The difficulty of researching and drafting reform recommendations for District statutes;
- The nature and extent of Advisory Group comments on draft reform recommendations;
- The ability to secure at least majority approval from the Advisory Group to issue draft reform recommendations;
- The possibility of new court rulings or legislation that require reworking of research or draft reform recommendations;
- The ability to obtain and analyze charging, sentencing, and other relevant statistics regarding offenses affected by the draft reform recommendations;
- The possibility of a major shift in other jurisdictions' criminal code reforms or best practices that require reworking of research or draft reform recommendations;
- The possibility of a Council request that the agency perform legal analysis of proposed legislation concerning criminal offenses; and
- Retention of the CCRC's experienced staff.

The CCRC has assessed these variables to the best of its ability based on its prior experience working on code reform. However, unexpected changes in any of these variables could significantly hinder the agency's ability to complete the Work Plan & Schedule.

III. Sequence of Code Reform Recommendations.

The CCRC's development of code reform recommendations will follow four sequential (though overlapping) phases, which can be summarized as follows:

- *Phase 1.* Facilitate enactment of Title 22 of the D.C. Code, which contains most District offenses, and propose other minor amendments to District criminal statutes. Phase 1 recommendations are intended to ease the administrative burden of future amendments to District criminal laws.
- *Phase 2.* Develop key general definitions, essential interpretive rules, and the most important culpability principles applicable to all reformed offenses. Phase 2 recommendations are intended to facilitate the clear and comprehensive drafting of reformed offenses, which will be consistently interpreted and applied by the courts.
- *Phase 3.* Develop reformed individual offenses consistent with general provisions using language that is accessible, intuitive, and complete. Phase 3 recommendations are intended to facilitate the clear articulation and consistent interpretation of District offenses.
- *Phase 4.* Review all reformed offenses together as a whole, creating an ordinal ranking of offense severity and establishing the classification of all individual offenses. Phase 4 recommendations are intended to facilitate proportionate penalties for all reformed District offenses.

These four phases follow an overarching logic: prepare Title 22 for reform, create a general framework applicable to all reformed offenses, reform offenses using that general framework,

and then reform the penalties for all offenses to be proportionate. It is important to note, however, that it is neither possible nor desirable for the CCRC to issue or finalize all the recommendations for each phase before starting the next. For example, the development of some of the Phase 2 recommendations will take significant time, such that, in order to meet the CCRC’s two-year deadline, work on Phase 3 recommendations must commence before completion of Phase 2. It is also expected, however, that work on later phases may reveal the need to rework aspects of earlier phases. Consequently, while the general sequence of code reform work is fixed, some overlap in the completion of Phases is necessary. With that in mind, the CCRC has structured the planned release of individual recommendations to ensure that members of the Advisory have the information necessary to provide informed comments and feedback on distributed materials.

The work of Phase 1 will be presented to the Council in mid-2017 as its first major report containing reform recommendations. The work of Phases 2, 3, and 4, in contrast, cumulatively builds recommendations for a second report to the Council at the end of FY 2018. It will consist of text for a single, cohesive set of reformed criminal statutes that comprise a new Title 22A and a concise commentary (suitable for adoption as legislative history) explaining how and why the reformed criminal statutes change existing District law. Appendices to the latter report will include: A) Advisory Group comments; and B) relevant crime statistics.

Below is a more detailed overview of how Phases 1, 2, 3, and 4 are expected to operate.

Phase 1. Enactment of Title 22 and technical clean-up of criminal statutes.

During Phase 1, the CCRC will address several of the agency’s statutory mandates¹⁵ that involve minor, often technical changes to District criminal statutes. The offenses recommended for change in this phase will not be fully revised and will need additional changes (in subsequent phases) to meet the statutory mandates for reform. However, Council adoption of the Phase 1 recommendations should significantly ease future reforms by “enacting” Title 22—a process of formally adopting into law the entirety of that title, separate and apart from the hundreds of bills and amendments passed in the last century that set out the language for various statutes within the title.

The recommendations developed in Phase 1 will comprise the CCRC’s first major report to the Council and Mayor. Appendices to the report will include: A) detailed information on affected statutes; B) Advisory Group comments; C) relevant crime statistics; and D) an appendix containing a draft bill that would enact the proposed changes into law.

- *Phase 1 Recommendations* (for a list of specific statutes, see the Schedule, below):
 - Repeal of archaic and unused statutes.

¹⁵ D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (5) Eliminate archaic and unused offenses; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary . . .”).

- Technical amendments to outdated language.
 - Amendment of provisions held to be unconstitutional.
 - Repeal of common law offenses.
 - Relocation of Title 22 statutes.
 - Enactment of Title 22.
- *Phase 1 Key Dates:*
 - The Advisory Group was given a first draft of the CCRC Report on *Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes* on November 2, 2016, with a request for comments on or by January 13, 2017. Three members submitted comments on the first draft, which were reviewed and used as the basis for a second draft that was given to the Advisory Group on January 25, 2017, with a request for comments on or by February 27, 2017.
 - A final draft and vote on the report containing Phase 1 recommendations is expected in April or May 2017.

Phase 2. General Provisions for a New Title 22A.

During Phase 2, the CCRC will develop a standard toolkit of rules, definitions, and principles for establishing criminal liability that will apply to all reformed offenses. The CCRC will also develop a coherent classification scheme for grading offenses and setting penalties, as well as penalty enhancements that apply to many or all offenses. Note, however, that the development of draft recommendations for penalty classes and general penalty enhancements during this phase will describe the penalty classes and differentiate gradations in penalty enhancements, but will not propose specific penalties or fines for any offenses. Recommendations for specific penalties or fines, including for penalty enhancements, will be addressed in Phase 4. Phase 2 work addresses several of the agency’s statutory mandates.¹⁶

- *Phase 2 Recommendations* (for a list of specific statutes, see the Schedule, below):
 - Preliminary provisions.
 - Basic requirements of offense liability.
 - Inchoate crimes.
 - Standardized penalty classes.
 - Generally applicable penalty enhancements.
 - Handling multiple counts at sentencing.
- *Key Dates:*
 - To maximize the Advisory Group’s time for review, the CCRC will issue recommendations developed in Phase 2 as they become available. The Advisory Group was given a first draft of the CCRC Report on *Recommendations for Chapter 2 of the Revised Criminal Code: Basic Requirements of Offense Liability* on December 21, 2016, with a request for comments on or by February 22, 2017. Draft

¹⁶ D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; . . . (7) Organize existing criminal statutes in a logical order; . . . (10) Propose such other amendments as the Commission believes are necessary . . .”).

recommendations for several other general provisions, such as voluntary intoxication and attempts to commit crimes, will be issued by the end of March, 2017. A final set of general provisions, concerning accomplice liability, conspiracy, solicitation, and multiple counts at sentencing will be proposed later, in the fourth quarter of FY 17.

- In the third quarter of FY 17, the CCRC and the Advisory Group will discuss the suitability of using general provisions reviewed by that date for subsequent use in conjunction with Phase 3 and 4 reforms.
- A final draft and vote on the combined report containing Phase 2, 3, and 4 recommendations will be held in the fourth quarter of FY 18.

Phase 3. Reformed Offenses for a New Title 22A.

During Phase 3, the CCRC will develop recommendations for modernizing the structure and language of the most serious, frequently-sentenced District offenses, consistent with the general definitions, rules, and principles for establishing liability established by the General Part. Draft recommendations for specific offenses will differentiate gradations in liability but will not propose specific penalties or fines, which will be addressed in Phase 4. Work for this phase addresses several of the agency’s statutory mandates.¹⁷

- *Phase 3 Recommendations* (for a list of specific statutes, see the Schedule, below):
 - Offenses against property.
 - Drug offenses.
 - Offenses against persons.
 - Offenses against government operations.
 - Offenses against public order.
- *Advisory Group Review:*
 - To allow the Advisory Group to evaluate similar offenses together, the CCRC will distribute recommendations developed in Phase 3 in five staggered, draft reports: property offenses; drug offenses; offenses against persons; offenses against government operations; and offenses against public order.
 - A final draft and vote on the Phase 3 recommendations will be part of the combined report containing Phase 2, 3, and 4 recommendations, held before the statutory deadline of September 30, 2018.

Phase 4. Proportionate Penalties for Title 22A Offenses.

During Phase 4, the CCRC will evaluate the relative seriousness of reformed District offenses, and accordingly recommend proportionate penalties and fines in a manner that fulfills several

¹⁷. D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; 4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses . . . (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate . . . (10) Propose such other amendments as the Commission believes are necessary . . .”).

CCRC mandates.¹⁸ Draft recommendations regarding the ranking of offense severity and classification of offenses may be comprised of alternatives for Council consideration.

- *Phase 4 Recommendations* (for a list of specific statutes, see the Schedule, below):
 - Ordinal ranking of offense severity.
 - Classification of offenses according to ordinal ranking.

- *Advisory Group Review*:
 - The release to the Advisory Group of the CCRC's ordinal ranking of offense severity and classification of offenses is planned for April 2018. However, to facilitate Advisory Group review, the CCRC may distribute recommendations on offense severity before submitting recommendations on classification of offenses.
 - A final draft and vote on the Phase 4 recommendations will be part of the combined report containing Phase 2, 3, and 4 recommendations, held before the statutory deadline of September 30, 2018.

IV. Ongoing Activities Supporting the Development of Recommendations.

The CCRC's development of specific code reform recommendations is supported by a variety of ongoing agency work.

Monitoring District Criminal Legislation & Case Law.

The starting place for criminal code reform is existing District law, whether legislative or judicial. A sound understanding of current District law is critical to providing commentary to the Council on how CCRC recommendations affect District law, a statutory mandate.¹⁹ Since the inception of the CCRC, staff has conducted a weekly review of legislative and judicial developments in the District and will continue to do so until all recommendations are finalized.

Monitoring Best Practices & Other Jurisdictions' Criminal Code Reforms.

By statute,²⁰ the process the CCRC uses to review District statutes also involves review of reforms in other jurisdictions' code reforms and the recommendations of criminal law experts. In recent years there has been a major surge in state-level criminal justice reforms, often through Justice Reinvestment Initiatives (JRIs) that seek to improve public safety and reduce costs. There also has been progress on new model recommendations for Sentencing and Sexual Assault through the American Law Institute (ALI). Recognizing that the public safety needs, norms and history of each jurisdiction are unique, the CCRC staff conducts a monthly review of new national developments that may be useful to the District's reform efforts.

¹⁸ D.C. Code § 3-152(a)(6) (“Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties.”).

¹⁹ D.C. Code § 3-152(b)(3).

²⁰ D.C. Code § 3-152(c)(2).

Outreach & Collaboration.

To examine best practices and models of reform in other jurisdictions, and to better understand public perspectives on topics like penalty proportionality, the CCRC must conduct outreach to other organizations and individuals. In the first quarter of FY 17 the agency sought to establish contacts at local courts and national subject matter experts in criminal code reform. Additional outreach to legal experts, criminal justice stakeholders, and the public are being planned.

Data Acquisition & Analysis.

The CCRC statute requires the agency to provide “charging, sentencing, and other relevant statistics” with its final recommendations to the Council and Mayor. However, such statistical information is also critical to the initial development of recommendations. For example, the sentences for a specific offense may show what District judges believe to be a proportionate penalty for that offense. To acquire data, the CCRC is statutorily authorized to request information from other District agencies, and a major data request was made of the D.C. Sentencing Commission in the first quarter of FY 17. The CCRC plans to work with social scientists in the Office of the City Administrator to analyze the data it acquires, beginning in February 2017.

Agency Legal Compliance.

The CCRC is a new independent agency in the District government, and has both agency-specific²¹ and District-wide responsibilities to operate efficiently, transparently, and lawfully. Since its inception on October 1, 2016, the CCRC has worked with a number of District agencies to set up appropriate financial, budgetary, human relations, facilities, ethics and other operations. To the best of its knowledge, the agency is fully in compliance with District rules and regulations. However, oversight of spending and the long-term development of a document retention system (within the statutory timeframe) remain work activities for the CCRC through FY 18.

Staff Development & Training.

The legal challenges of criminal code reform are unique, and the CCRC has been fortunate to retain a staff with significant experience working on such challenges. Employee development and training is critical to maintaining the staff’s unique skills and motivation. In the third quarter of FY 17 staff will be able to attend a law school conference on criminal code reform, and hear discussion of new, nationwide recommendations for Sentencing and Sexual Assault laws issued by the American Law Institute.

²¹ D.C. Code § 3-151(d)(4) (“Develop and institute internal policies, procedures, and processes to ensure efficient operations;”); D.C. Code § 3-154(a) (“The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter.”); D.C. Code § 3-154(b) (“The Commission shall file an annual report with the Council before March 31 of each year . . .”).

V. Schedule.

The below chart provides details on the specific topics of CCRC recommendations during Phases 2 and 3, and the target date of their release for review by the agency's Advisory Group. Because the nature and extent of the Advisory Group's comments cannot be fairly anticipated, the schedule does not place an end date for work on particular reform recommendations. However, all recommendations must be completed by the agency's statutory deadline of September 30, 2018.

Phase 1 scheduling information is not included because the CCRC already issued its draft recommendations for that phase to the Advisory Group. Detailed scheduling information for Phase 4 is not provided because the topics and statutes involved are identical to those listed for Phases 3 and 4. The Phase 4 release to the Advisory Group of the CCRC's ordinal ranking of offense severity and classification of offenses is planned for April 2018. However, to facilitate Advisory Group review, the CCRC may distribute recommendations on offense severity before submitting recommendations on classification of offenses.

Please note that the target dates of release for Advisory Group review are estimates, subject to the limitations and assumptions listed in Part II, above. When feasible, the CCRC will issue draft recommendations before the target date.

Schedule details begins on the next page.

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
General Part	Basic Requirements of Offense Liability	NA	Proof of Offense Elements Beyond a Reasonable Doubt	Dec. 2016
General Part	Basic Requirements of Offense Liability	NA	Conduct Requirement	Dec. 2016
General Part	Basic Requirements of Offense Liability	NA	Voluntariness Requirement	Dec. 2016
General Part	Basic Requirements of Offense Liability	NA	Causation Requirement	Dec. 2016
General Part	Basic Requirements of Offense Liability	NA	Culpable Mental State Requirement	Dec. 2016
General Part	Basic Requirements of Offense Liability	NA	Hierarchy of Culpable Mental States	Dec. 2016
General Part	Basic Requirements of Offense Liability	NA	Rules of Interpretation Applicable to Culpable Mental State Requirement	Dec. 2016
General Part	Preliminary Provisions	NA	Short Title & Effective Date	Mar. 2017
General Part	Preliminary Provisions	NA	Effect of Headings and Captions	Mar. 2017
General Part	Preliminary Provisions	NA	Interaction with Other Code Provisions	Mar. 2017
General Part	Preliminary Provisions	NA	General Rules of Interpretation and Construction	Mar. 2017
General Part	Imputation of Offense Elements	NA	Willful Blindness	Mar. 2017
General Part	Imputation of Offense Elements	NA	Voluntary Intoxication	Mar. 2017

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
General Part	Inchoate Liability	22-1803	Attempts	Mar. 2017
General Part	Offense Classes	NA	Classes & Authorized Terms of Imprisonment	Apr. 2017
General Part	Offense Classes	NA	Classes & Authorized Fines	Apr. 2017
General Part	Penalty Enhancements	22-3601	Crimes against senior citizen victims	Apr. 2017
General Part	Penalty Enhancements	22-3602	Crimes against a citizen patrol member	Apr. 2017
General Part	Penalty Enhancements	22-3611	Crime of violence against minors	Apr. 2017
General Part	Penalty Enhancements	22-3703	Bias-related crime	Apr. 2017
General Part	Penalty Enhancements	22-3751	Crimes against taxicab drivers	Apr. 2017
General Part	Penalty Enhancements	22-3751.01	Crimes against transit operators and Metrorail station managers	Apr. 2017
General Part	Penalty Enhancements	22-4502	Crime committed when armed	Apr. 2017
General Part	Penalty Enhancements	22-1804	Second Conviction	Apr. 2017
General Part	Penalty Enhancements	22-1804a	2 Prior Felonies	Apr. 2017
Property	Fraud	22-3221	Fraud	May 2017
Property	Fraud	22-3223	Credit Card Fraud	May 2017
Property	Fraud	22-3241	Forgery	May 2017
Property	Fraud	22-1510	Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; "credit" defined	May 2017
Property	Fraud	22-3227.02	Identity Theft	May 2017
Property	Theft	22-3211	Theft	May 2017
Property	Theft	22-3212	Theft Penalty	May 2017
Property	Theft	22-3216	Taking Property Without Right	May 2017
Property	Theft	22-3215	Unauthorized Use of a Vehicle	May 2017
Property	Theft	22-3213	Shoplifting	May 2017
Property	Theft	22-3214	Commercial Piracy	May 2017
Property	Theft	22-3214.01	Deceptive Labeling	May 2017

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Property	Damage to Property	22-303	Malicious Destruction of Property	May 2017
Property	Damage to Property	22-301	Arson	May 2017
Property	Damage to Property	22-302	Burning to Defraud	May 2017
Property	Damage to Property	22-3312.01 through 22-3312.05	Graffiti abatement	May 2017
Property	Damage to Property	22-3303 through 22-3312, 22-3313 through 22-3318	Miscellaneous property damage offenses	May 2017
Property	Damage to Property	22-3319	Obstructing railway	May 2017
Property	Burglary	22-801	Burglary	May 2017
Property	Trespass	22-3301	Forcible Unauthorized Entry	May 2017
Property	Trespass	22-3302	Unauthorized Entry	May 2017
Property	Trespass	22-1341	Unauthorized Entry vehicle	May 2017
Property	Trespass	22-601	Breaking and Entering Vending Machine	May 2017
Property	Trespass	22-1307	Blocking passage	May 2017
Property	Trespass	22-1323	Obstructing bridges	May 2017
Property	Trespass	22-1321	Disorderly Conduct (obstructing)	May 2017
Property	Stolen Property	22-3232	Receipt of Stolen Property (RSP)	May 2017
Property	Stolen Property	22-3231	Trafficking in Stolen Property (TSP)	May 2017
Property	Stolen Property	22-2501	Implements of Crime	May 2017
Property	Stolen Property	22-3233	Alteration Motor VIN	May 2017
Property	Stolen Property	22-3234	Alteration Bike ID	May 2017
General Part	Inchoate Liability	22-1805a	Conspiracy	Jul. 2017
Drugs	Paraphernalia	48-1102	Factors to be considered in determining whether object is paraphernalia	Aug. 2017

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Drugs	Paraphernalia	48-1103	Prohibited Acts (Paraphernalia)	Aug. 2017
Drugs	Paraphernalia	48-904.10	Possession of Paraphernalia	Aug. 2017
Drugs	Drugs	48-904.01(a)	Manufacture, Distribute, and Possess with Intent to Distribute a Controlled Substance	Aug. 2017
Drugs	Drugs	48-904.01(b)	Create, Distribute, and Possess with Intent to Distribute Counterfeit Substances	Aug. 2017
Drugs	Drugs	48-904.01(d)	Possession of a Controlled Substance	Aug. 2017
Drugs	Drugs	48-904.01(e)	Conditional Discharge for Possession as First Offense	Aug. 2017
Drugs	Drugs	48-904.01(f)	Charging Provision	Aug. 2017
Drugs	Drugs	48-904.01(g)	Definition of "Offense"	Aug. 2017
Drugs	Drugs	48-904.06	Distribution to Minors	Aug. 2017
Drugs	Drugs	48-904.07	Enlistment of Minors	Aug. 2017
Drugs	Drugs	48-904.07	Drug Free Zones	Aug. 2017
Drugs	Drugs	48-904.08	Second or subsequent offenses	Aug. 2017
Drugs	Drugs	48-904.09	Attempt; Conspiracy	Aug. 2017
Drugs	Drugs	48-1101	Definitions of Paraphernalia	Aug. 2017
General Part	Inchoate Liability	NA	Accomplice Liability	Sept. 2017
General Part	Multi-Count Liability	NA	Merger of Offenses	Sept. 2017
General Part	Multi-Count Liability	22-3203	Consecutive & Concurrent Sentencing	Sept. 2017
General Part	Inchoate Liability	22-2107	Solicitation	Oct. 2017
General Part	Inchoate Liability	NA	Renunciation	Nov. 2017

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Persons	Threats	22-1810	Felony Threats	Jan. 2018
Persons	Threats	22-407	Misdemeanor Threats	Jan. 2018
Persons	Threats	22-3133	Stalking	Jan. 2018
Persons	Threats	22-3251	Extortion	Jan. 2018
Persons	Threats	22-3252	Blackmail	Jan. 2018
Persons	Threats	22-1402	Recordation of Deed to extort	Jan. 2018
Persons	Threats	22-1321	Disorderly Conduct (threats, loud and abusive language)	Jan. 2018
Persons	Reckless Endangerment	22-1321	Disorderly Conduct (reckless endangerment)	Jan. 2018
Persons	Reckless Endangerment	22-1322	Rioting	Jan. 2018
Persons	Assault	22-401	Assault with Intent to Kill	Jan. 2018
Persons	Assault	22-402	Assault with Deadly Weapon	Jan. 2018
Persons	Assault	22-403	Assault With Intent to Commit Other felony	Jan. 2018
Persons	Assault	22-404	Simple assault	Jan. 2018
Persons	Assault	22-404(a)	Felony assault	Jan. 2018
Persons	Assault	22-404.01	Aggravated Assault	Jan. 2018
Persons	Assault	22-405	Assault of Police Officer	Jan. 2018
Persons	Assault	22-406	Mayhem	Jan. 2018
Persons	Assault	22-1301	Affrays	Jan. 2018
Persons	Assault	22-1321	Disorderly Conduct (incitement)	Jan. 2018
Persons	Assault	22-1321	Disorderly Conduct (simple assault)	Jan. 2018
Persons	Robbery	22-2801	Robbery	Jan. 2018
Persons	Robbery	22-2801	Attempted Robbery	Jan. 2018
Persons	Robbery	22-2803	Carjacking	Jan. 2018

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Persons	Kidnapping	22-2001	Kidnapping	Jan. 2018
Persons	Sexual Offenses	22-1312	Lewd acts	Jan. 2018
Persons	Sexual Offenses	22-3001	Definitions	Jan. 2018
Persons	Sexual Offenses	22-3002	First Degree Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3003	Second Degree Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3004	Third Degree Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3005	Fourth Degree Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3006	Misdemeanor Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3007	Defense to Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3008	First Degree Child Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3009	Second Degree Child Sexual Abuse	Jan. 2018
Persons	Sexual Offenses	22-3009.01	First degree sexual abuse of a minor	Jan. 2018
Persons	Sexual Offenses	22-3009.02	Second degree sexual abuse of a minor	Jan. 2018
Persons	Sexual Offenses	22-3009.03	First degree sexual abuse of a secondary education student	Jan. 2018
Persons	Sexual Offenses	22-3009.04	Second degree sexual abuse of a secondary education student	Jan. 2018
Persons	Sexual Offenses	22-3010	Enticing a child or minor	Jan. 2018
Persons	Sexual Offenses	22-3010.01	Misdemeanor sexual abuse of a child or minor	Jan. 2018
Persons	Sexual Offenses	22-3010.02	Arranging for a sexual contact with a real or fictitious child	Jan. 2018
Persons	Sexual Offenses	22-3013	First degree sexual abuse of a ward, patient, client, or prisoner	Jan. 2018
Persons	Sexual Offenses	22-3014	Second degree sexual abuse of a ward, patient, client, or prisoner	Jan. 2018
Persons	Sexual Offenses	22-3015	First degree sexual abuse of a patient or client	Jan. 2018

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Persons	Sexual Offenses	22-3016	Second Degree Sexual Abuse of a Patient or Client	Jan. 2018
Persons	Sexual Offenses	22-3101	Sex performance using minors	Jan. 2018
Persons	Cruelty & Neglect	22-1101	Cruelty to Children	Jan. 2018
Persons	Cruelty & Neglect	22-2202	Neglect of Children	Jan. 2018
Persons	Homicide	22-2101	First degree Murder	Feb. 2018
Persons	Homicide	22-2102	First Degree Murder Railroads	Feb. 2018
Persons	Homicide	22-2103	Second degree Murder	Feb. 2018
Persons	Homicide	22-2105	Manslaughter	Feb. 2018
Persons	Homicide	22-2106	Murder Law Enforcement Officer	Feb. 2018
Persons	Homicide	22-2107a	Solicitation	Feb. 2018
Government Operations	Prison Operation	22-2601	Escape	Mar. 2018
Government Operations	Prison Operation	22-2603.01	Definitions	Mar. 2018
Government Operations	Prison Operation	22-2603.02	Unlawful possession of contraband	Mar. 2018
Government Operations	Prison Operation	22-2603.03	Penalties Unlawful possession of contraband	Mar. 2018
Government Operations	Obstruction of Justice	22-722	Obstruction of Justice	Mar. 2018
Government Operations	Obstruction of Justice	22-2402	Perjury	Mar. 2018
Government Operations	Contempt	11-0944	Judicial contempt	Mar. 2018
Government Operations	Contempt	16-1005	Violation of Civil Protection Order	Mar. 2018

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Government Operations	Contempt	23-1110	Failure to Appear for Citation Release	Mar. 2018
Government Operations	Contempt	23-1327	Failure to Appear (BRA)	Mar. 2018
Government Operations	Contempt	23-1328	Offenses While on Release	Mar. 2018
Government Operations	Contempt	23-1329	Conditions of Release Contempt	Mar. 2018
Government Operations	Contempt	50-2201.05b	Fleeing Law Enforcement Officer	Mar. 2018
Government Operations	Other	22-4015	Failure to Register as Sex Offender	Mar. 2018
Government Operations	Other	22-1211	Tampering with a Detection Device	Mar. 2018
Government Operations	Other	22-723	Tampering with Physical Evidence	Mar. 2018
Government Operations	Other	4-218.01	Fraud in Obtaining Public Assistance	Mar. 2018
Government Operations	Other	22-712	Bribery	Mar. 2018
Public Order	Disturbance of Peace	22-1312	Lewd Indecent Obscene Acts	Mar. 2018
Public Order	Disturbance of Peace	22-1321	Disorderly Conduct (public urination)	Mar. 2018
Public Order	Disturbance of Peace	22-2302	Panhandling	Mar. 2018

D.C. CRIMINAL CODE REFORM COMMISSION 2016 ANNUAL REPORT

Subtitle	General Topic/Chapter	Current DC Code Section	Specific Topic of Reform Recommendation	First Draft Complete
Public Order	Disturbance of Peace	25-1001	Possession Open Container of Alcohol/Public Intoxication	Mar. 2018
Public Order	Prostitution/Solicitation	22-2701	Prostitution/Sexual Solicitation	Mar. 2018
Public Order	Prostitution/Solicitation	22-2701.01	Definitions Prostitution/Sexual Solicitation	Mar. 2018
Public Order	Prostitution/Solicitation	22-2705	Pandering	Mar. 2018
Public Order	Prostitution/Solicitation	22-2712	Operating a House of Prostitution	Mar. 2018

APPENDIX A: ADVISORY GROUP COMMENTS ON CCRC REPORT #1.

Comments of U.S. Attorney's Office of the District of Columbia on D.C. Criminal Code Commission Phase I Materials (Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes)

Submitted Jan. 11, 2017

The U.S. Attorney's Office for the District of Columbia maintains the positions it previously has articulated in its correspondence on December 18, 2014, to the former D.C. Sentencing and Criminal Code Revision Commission, and on June 16, 2016, to Kenyan McDuffie (then chairman of the Committee on the Judiciary & Public Safety of the District of Columbia Council). In response to the request of the District of Columbia Criminal Code Reform Commission, we provide the following preliminary comments on the Phase I materials (Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes) provided for Advisory Group review:

- Page 17 (Final paragraph that begins "Enactment of Title 22 . . ." and FN48)
 - This paragraph states that "[e]stablished canons of construction state that legislative intent is the primary principle of statutory interpretation"
 - However, this language (and accompanying text of footnote 48) relies on old cases that give legislative history more weight.
 - The current trend is to rely exclusively on the plain meaning of the text, if it is clear.
 - It is only if there is some resulting ambiguity or absurdity that the court looks to legislative history.
 - The language here, therefore, likely will not change how the District of Columbia Court of Appeals proceeds. *See, e.g., In re Smith*, 138 A.3d 1181, 1185 n.8 (D.C. 2016) (citing *In re Al-Baseer*, 19 A.3d 341, 344 (D.C.2011) ("The court's task in interpreting a statute begins with its language, and, where it is clear, and its import not patently wrong or absurd, our task comes to an end.")).
- Page 18 (Final paragraph before Section VII (Conclusion) and FN 49)
 - This paragraph states that "[b]y adopting this language in Appendix IX, the Council would explicitly reject any argument that prior court rulings construing

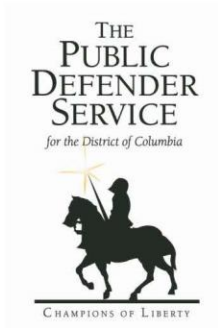
the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment.”

- This refers to the prior paragraph which states that “Title 22 . . . is enacted into law . . . with no substantive change to law intended except as otherwise noted in the ‘Statement of Legislative Intent for Enactment of Title 22’ included in this bill.”
- N.B.: The court still could construe reenactment as approval, by interpreting the “intends no substantive change” language as meaning “no substantive change” to the statute *as it has been interpreted* by the Court *at the time of enactment*.

➤ APPENDICES

- IV: Common Law Offenses List & Text; Part 2 (Offenses w/ Only a Penalty Codified)
 - What will the basis for “elementizing” the substance of these offenses be? The Advisory Group should agree and recommend to the Commission that any such elementizing be based, as an initial matter, on the relevant jury instruction crafted by the “Redbook Committee” (to the extent that any such instruction exists) that provides guidance as to the elements of the particular uncodified offense.
- V: Relocation of Title 22 Provisions List and Text
 - There is no objection to reorganization of various sections to reflect a more sensible structure.
 - However, the Commission should exercise great care when reorganizing evidentiary provisions (in particular) so as to avoid important provisions getting “lost” (*e.g.*, D.C. Code Section 22-3021, regarding the inadmissibility of reputation or opinion evidence of a victim’s past sexual behavior).
 - Cross-references within Title 22 -- as well as reorganization by subject, category, statute, etc., when provisions are moved to other titles -- should be employed.

MEMORANDUM



To: Richard Schmechel, Executive Director
D.C. Criminal Code Reform Commission

From: Laura E. Hankins, General Counsel

Date: January 13, 2017

Re: Comments on First Draft of Report #1:
Recommendations for Enactment of D.C.
Code title 22 and Other Changes to
Criminal Statutes

In general, the Public Defender Service approves the recommendations in the first draft of Report #1. The Report and accompanying Appendices reflect the numerous hours of painstaking work done by the D.C. Sentencing Commission Code Revision Project staff in 2014 and 2015 and the considerable work done by the Commissioners working on the Code Revision Project. PDS particularly appreciates that the D.C. Criminal Code Reform Commission is not merely resubmitting to the D.C. Council the September 2015 report that was unanimously approved the D.C. Sentencing Commission. Rather, the Criminal Code Reform Commission has revisited its work and makes a number of additional recommendations. For example, the September 2015 report recommended deleting D.C. Code § 22-3306 as one of many archaic and unused offenses in the D.C. Code but now recognizes that such deletion may conflict with the Home Rule Act.

Report #1 is an important first step by the Commission towards the fulfillment of its mandate. Specifically, the Report and accompanying Appendices satisfy or make considerable progress towards completing the Commission's mandate that it identify criminal statutes that have been held unconstitutional and recommend their amendment; identify crimes defined in common law that should be codified; organize existing criminal statutes in a logical order; and most notably, enable the adoption of Title 22 as an enacted title of the D.C. Official Code. PDS notes however that the more important and, not coincidentally, more difficult work of the Commission is still to come. Revising the language of the District's criminal statutes to describe all elements, including mental states, that must be proven; reducing unnecessary overlap and gaps between criminal offenses; and adjusting penalties, fines, and the gradation of offenses to provide for proportionate penalties are, in the view of PDS, the most critical aspects of the Commission's mandate and must be done if the District is to have a fair, just and modern criminal justice system.

January 13, 2017

Page 2

PDS suggests the following edits to the Report:

1. In the first sentence of footnote 16 insert a space between “to” and the section symbol,”§,” for statute 36-153.
2. In Part A. Findings, of Section II, Technical Amendments to Correct Outdated Language,¹ change the word “discussed” to “stated,” to have that sentence read, “The ...Commission has identified thirty-seven statutes in eleven titles of the D.C. Code that contain outdated language within the above stated parameters.” The paramaters are not “discussed” in the preceding paragraph, only outlined. Any discussion, or explanation, of the parameters would seem to be in the September 2015 report that was submitted to the Council, which the preceding paragraph references.
3. In Subpart 1, D.C. Code § 7-2506.01, of Part A., Findings, of Section III, Unconstitutional Statutes to Amend,² state what the extra element is. The explanation need not be in the text and can be relegated to a footnote, but the report is unnecessarily vague without it.
4. Delete the extra word in the text of the sentence containing footnote 50. “Established judicial canons of construction....⁵⁰ and the proposed enactment legislation ~~is~~ flatly states in the ‘Statement of Legislative Intent....’”

¹ At page 8.

² At page 10.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division



MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: January 13, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report #1
Recommendations for Enactment and Other Changes

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report #1 Recommendations for Enactment and Other Changes (the Report). OAG reviewed this document and makes the recommendations noted below.¹

COMMENTS ON THE DRAFT REPORT

Archaic and Unused Offenses in Title 22

Though OAG does not oppose repealing the recommended provisions contained in Appendix I, we do not agree that just because an offense had not been charged in adult court in the past 7 years means that the offense is necessarily archaic or unused.²

¹This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

²See footnote 8 of the Report which states that the CCRC reviewed two data sets which included 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015.

Footnote 13, on page 7 of the Report, observes that five of the offenses proposed to be eliminated are closely related to the contemporaneous Malicious Destruction of Property statute, and therefore suggests that the legislative history of the bill associated with the Report should indicate that the current Malicious Destruction of Property statute - and therefore the codified version of it in this bill - does not automatically exclude the conduct covered by those five statutes. Since the purpose of this history appears to state the current Council's interpretation of existing law, we believe that that this observation in the legislative history may carry little interpretive weight. *See, e.g., Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) ("subsequent legislative history is a hazardous basis for inferring the intent of an earlier Congress") (internal quotation omitted). We, therefore, recommend that the text of the bill be amended to explicitly state that conduct that had previously been prohibited by these provisions are covered by the remaining provision.

In Appendix I, Archaic and Unused Offenses and Provisions List & Text, the Report recommends striking the phrase "the Women's Bureau of the Police." from D.C. Official Code § 22-2703.³ OAG objects to the mere striking of the phrase and instead suggests that the phrase be replaced with a reference to the Metropolitan Police Department (MPD). D.C. Official Code § 22-2703 permits the court to impose conditions upon a person who is found guilty of engaging in prostitution or soliciting for prostitution in violation of D.C. Official Code § 22-2701. Section 22-2703 states "...The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant." Removal of the reference to "the Women's Bureau of the Police Department" would remove law enforcement's authorization and direction to perform certain duties. Replacing "the Women's Bureau of the Police Department" with a reference to MPD would modernize the language contained in this Code provision while preserving the current state of the law.

³ D.C. Official Code § 22-2703, Suspension of sentence; conditions; enforcement, states, "The court may impose conditions upon any person found guilty under § 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include an order to stay away from the area within which the offense or offenses occurred, submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant."

Technical Amendments to Correct Outdated Language

In Appendix II: Technical Amendments List & Text there is a list of Technical Amendments to Statutes in Title 22. See page 10 of Appendices I-VIII. Included in the list is a recommendation pertaining to D.C. Official Code § 22-811, Contributing to the delinquency of a minor. The recommendation is to strike subsection (e) delegating prosecutorial authority to the Attorney General or his or her assistants. OAG would ask that the Commission remove this recommendation. We believe that do to an early Congressional grant of authority, OAG has jurisdiction to prosecute misdemeanor offenses under this provision.

Common Law Offenses to Repeal and Further Codify

The Report recommends that the Council repeal the common law offense of “disturbing public worship.” While OAG does not object to its repeal, the Report should note that D.C. Official Code § 22-1314 initially codified this offense and, upon its repeal was replaced with D.C. Official Code § 22-1321 (b). D.C. Official Code § 22-1321 (b) states, “ It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, with the intent and effect of impeding or disrupting the orderly conduct of a lawful public gathering, or of a congregation of people engaged in any religious service or in worship, a funeral, or similar proceeding.”

Relocation of Title 22 Provisions to Other D.C. Code Titles

The Report states, on page 15, that “In addition, § 22-4331, which codifies a penalty for violations of Game and Fish laws in Chapter 43 of Title 22 is no longer recommended for removal because it is a penalty provision. The remainder of Chapter 43 is still recommended for removal. ” While OAG agrees that this penalty provision should not be moved, we also believe that D.C. Official Code § 22-4329 also should not be moved. This provision makes it an offense for a person to refuse to permit an inspection.⁴ The penalty for refusing to permit an inspection is found in § 22-4331 and, so, should also be kept in Chapter 43. A conforming amendment would also have to be made to § 22-4329, similar to the conforming amendment needed for § 22-4331, that would replace the language “for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter” with the citation to wherever the remainder of Chapter 43 is moved.

Enactment of Title 22

⁴ D.C. Official Code § 22-4329, Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours, states “Authorized officers and employees of the government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation, or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall, or cold-storage plant. No person shall refuse to permit any such inspection.

The discussion concerning enactment of Title 22 indirectly cites language that is codified in the United States Code and describes the status of the D.C. Official Code. See pages 15-18 of the Report. The discussion states that Title 22 will remain a prima facie statement of District law unless it is enacted into the Code, but the discussion then references statutory language (and case language) stating that the D.C. Official Code “*shall . . . establish prima facie the laws*” of the District. 1 U.S.C. § 204(b) (cited on page 16, footnote. 48). The Council’s authority to enact titles of the D.C. Official Code into positive law is, to OAG’s understanding, long settled, but to avoid any confusion, it may be beneficial to accompany that statutory and case cite with a brief citation to the Council’s legislative power.

Page 18 of the Report quotes section 102 of the bill as saying “Title 22 of the District of Columbia Official Code is enacted into law to read as follows, *with no substantive change to law intended, except as otherwise noted in the “Statement of Legislative Intent for Enactment of Title 22” included in this bill.*” The actual draft bill does not contain the italicized language and, so, should be amended accordingly.

Page 18 also discusses the significance of statements about the intent of the bill. It states that by adopting these statements, the bill would “explicitly reject any argument that prior court rulings construing the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment.” That is not correct. The only way for provisions of Title 22 to mean the same thing post-enactment that they meant pre-enactment is for controlling judicial constructions of their pre-enactment language to carry through into the enacted bill. Stripping away controlling judicial interpretations of a provision would be tantamount to amending that provision.

COMMENTS ON THE DRAFT BILL

The very beginning of the bill, prior to any numbered sections, includes a “Statement of Legislative Intent.” A Statement of Legislative Intent would be beneficial as part of this bill’s legislative history, but in order for it be incorporated into the bill, it should be given a section number, formatted according to the “Council of the District of Columbia Legislative Drafting Manual”, and placed after the “Be It Enacted” portion.

The bill’s amendment to D.C. Official Code § 50-1401.01(a)(3) would replace several references to “him” with references to “him or her.” It would leave untouched, however, the final phrase “whenever demand is made by a police officer such instructor shall display *to him* such certificate.” For consistency, this should be replaced with “to him *or her*.”

The bill repeals D.C. Official Code § 36-153, Unauthorized use, defacing, or sale of registered vessel. The bill also makes a conforming amendment to § 36-154, Use or possession of vessel without purchase of contents prima facie evidence of unlawful use. The conforming amendment replaces the reference to § 36-153 with the penalty provision that is currently contained within that Code section. While making this conforming amendment, OAG suggests that the title to § 36-154 be amended. Once § 36-153 is repealed, § 36-154 would be a

standalone Code provision. While this offense does establish when there is prima facie evidence of unlawful use, it also establishes an offense. We, therefore, recommend that the Title of this offense be shortened and renamed, "Use or possession of vessel without purchase."