



D.C. Criminal Code Reform Commission
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MINUTES OF PUBLIC MEETING

WEDNESDAY, MARCH 4, 2020, at 10:00 AM
CITYWIDE CONFERENCE CENTER, 11th FLOOR OF 441 4th STREET NW
WASHINGTON, D.C. 20001

On Wednesday, March 4, 2020 at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held in Room 1112 at 441 Fourth St., N.W., Washington, D.C. The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)	Jinwoo Park (Senior Attorney Advisor)
Rachel Redfern (Senior Attorney Advisor)	Gabrielle Green (Attorney Advisor)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of The Public Defender Service for the District of Columbia)	Elana Suttentberg (Visiting Attendee of the United States Attorney for the District of Columbia)
Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)	Dave Rosenthal (Designee of the Attorney General of the District of Columbia) (by phone)
Don Braman (Council Appointee) (by phone)	Paul Butler (Council Appointee) (by phone)

I. Welcome and Announcements.

- a. The Executive Director stated that in approximately two weeks, the CCRC intends to issue a report with recommendations for changes to Chapter 6, which will include recommendations for maximum penalties (fines and imprisonment) for penalty classes, and penalties for bias related and repeat offender enhancements. The Executive Director noted that this report will not include detailed discussion of rationales for how these recommendations for penalty classes apply to particular offenses. Time permitting, the Executive Director said that later in the spring, the CCRC intends to provide more detailed discussion of how and why the specific offenses are recommended for particular punishments using the revised classification system.
- b. The Executive Director asked Advisor Group members if they are available for an additional meeting to be held on April 22, 2020. The Director noted that the meeting may not be necessary, but asked present members to block off the time. Whether the meeting is held will depend on the comments received from the Advisory Group on April 15 regarding the First Draft of Report #50, and the input from the Committee on the Judiciary and Public Safety.
 - i. The Advisory Group tentatively agreed that if an additional meeting is needed, it will be held on April 23, 2020, at 10:00 AM.
- c. The Executive Director requested that in preparing comments to the First Draft of Report #50, that Advisory Group members limit their comments to new changes that the CCRC has made to draft statutes and commentary since the Advisory Group last reviewed these materials. The Executive Director noted that all written comments to prior drafts have been preserved and are available for reconsideration; they need not be repeated.
- d. The Executive Director said staff are available, upon request, to meet individually with Advisory Group members to discuss questions or concerns.

II. The Advisory Group Discussed First Draft of Report #50, Cumulative Updates to the Revised Criminal Code Other than Chapter 6.

- a. The Executive Director asked if the Advisory Group members had any questions or matters to discuss at this time regarding the First Draft of Report #50.
- b. The USAO representative asked why the RCC sexual abuse of a minor statute (RCC § 22E-1302) requires strict liability as to the age of the complainant in the offense, with an affirmative defense for a reasonable mistake of age, but other RCC sex offenses require recklessness as to the complainant's age and sexually suggestive conduct with a minor (RCC § 22E-1304) makes the complainant's age an element of the offense.
 - i. The CCRC staff replied that strict liability may be more proportionate under the RCC sexual abuse of a minor statute because the offense requires comparatively more serious conduct (i.e., a sexual act or sexual contact). The RCC sexually suggestive conduct with a minor offense is

broader and includes comparatively less serious conduct (e.g. kissing with intent to sexually arouse), so it may be more proportionate to require proof of recklessness as to the age of the complainant. The CCRC staff also referred to the RCC enticing a minor into sexual conduct offense (RCC § 22E-1305), which is an inchoate offense that does not require any sexual activity to occur requires recklessness as to the age of the complainant.

- ii. The CCRC staff noted that RCC is an outlier nationally in criminalizing the types of relatively low-level conduct involved in the sexually suggestive conduct with a minor offense.
 - iii. The Executive Director noted that the American Law Institute (ALI) will be issuing new recommendations for model sex offenses sometime this year, possibly in May. The Executive Director noted that it appears the ALI will recommend (consistent with prior drafts) that sex offenses require that the actor was reckless as to the age of the complainant. The Executive Director said he would distribute those recommendations when they are formally issued by the ALI.
- c. The Executive Director noted that when the First Draft of Report #50 was drafted, it was unclear when the report including recommendations as to jury demandability would be issued. As a result, some language in First Draft of Report #50 may not properly cite to the First Draft of Report #51, which included jury demandability recommendations.

III. Adjournment.

- a. There being no further questions from the Advisory Group, the meeting was adjourned at 10:20 am.