



# D.C. Criminal Code Reform Commission

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(202) 442-8715 [www.ccrc.dc.gov](http://www.ccrc.dc.gov)

## MINUTES OF PUBLIC MEETING

**WEDNESDAY, MARCH 7, 2018 at 10:00 AM**

**CITYWIDE CONFERENCE CENTER, 11th FLOOR OF 441 4th STREET NW  
WASHINGTON, D.C. 20001**

On Wednesday, March 07, 2018 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 1107 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 [richard.schmechel@dc.gov](mailto:richard.schmechel@dc.gov).

### **Commission Staff in Attendance:**

Richard Schmechel (Executive Director)

Jinwoo Park (Attorney Advisor)

Rachel Redfern (Chief Counsel for  
Management & Legislation)

Michael Serota (Chief Counsel for Policy &  
Planning)

### **Advisory Group Members and Visitors in Attendance:**

Paul Butler (Council Appointee) via phone

Don Braman (Council Appointee)

Laura Hankins (Designee of the Director of  
The Public Defender Service for the District  
Of Columbia)

Kevin Whitfield (Designee of the  
Chairperson of the Committee on the  
Judiciary and Public Safety)

Katerina Semyonova (Visiting Attendee of  
the Public Defender Service for the District  
of Columbia)

Dave Rosenthal (Designee of the Attorney  
General for the District of Columbia)

## **I. Welcome.**

- a. The Executive Director welcomed new member Kevin Whitfield, the designee of the Chairman of the Committee on the Judiciary and Public Safety.
- b. The Executive Director noted that comments on the most recent package of draft reports are due this Friday, March 9, 2018.
- c. The Executive Director stated that CCRC staff intends to send out the next package of draft reports by the end of the following week. This package will include reports pertaining to solicitation and renunciation, homicide offenses, and child and elderly abuse offenses.
- d. The Executive Director noted that feedback from Advisory Group members would be appreciated for future draft reports if the proposed 50% penalty reduction rule for attempt liability is inappropriate as applied to any particular offense. The Executive Director also asked for feedback on any specific merger issues that Advisory Group members have identified in the recent drafts of offenses against persons.

## **II. The Advisory Group discussed First Draft of Report #16: Robbery.**

- a. The Public Defender Service (PDS) representative asked whether the revised robbery statute changes current law by allowing for increased punishment when a protected person is harmed, regardless of whether the defendant took property from that protected person. The PDS representative was particularly concerned that a harm to a nearby protected person would both elevate the liability for robbery and be the basis for an elevated assault charge if there was also an assault to the person from whom property was taken.
  - i. Staff replied that it's unclear from the current draft and the commentary does not address such a fact pattern. Currently, there is no case law interpreting how the current statutory enhancement for crimes committed against senior citizens or minors would apply in a robbery in which an elderly person or minor was threatened or harmed, but the property was taken from someone else.
  - ii. The Office of the Attorney General (OAG) representative noted that, in principle, he agreed that double-counting the status of a protected person toward both a robbery and assault seemed inappropriate.
- b. The PDS representative also asked about how long "flight" extends beyond the initial taking or attempted taking of property.
  - i. CCRC staff replied that there is no bright line rule, and that the revised statute is intended to follow DCCA case law relating to felony murder that holds that a robbery continues as long as the defendant is carrying the property away.
  - ii. The OAG representative noted that including an example of how force, injury, or threats could facilitate flight in the commentary would be helpful.
- c. The OAG representative also stated that he would prefer if pickpocketing were still criminalized as a form of robbery, either as a lower grade of robbery, or as a separate robbery offense. The OAG representative said that District law has long included pickpocketing and other non-violent takings from the person as a form of robbery, and this conduct should retain that label.
  - i. The PDS representative agreed that the labeling is important, but argued that despite District law, the common understanding is that robbery requires some

use of threats or force, and it would be inappropriate to label non-violent takings as a form of robbery.

### **III. The Advisory Group discussed First Draft of Report #17: Criminal Menace and Criminal Threat Offenses.**

- a. The OAG representative suggested the offenses “criminal menace” and “criminal threats” could omit the word “criminal” and be changed to “menace” and “threats.”
  - i. The Executive Director replied that as a drafting matter, the word “criminal” makes it clearer that the terms “criminal menace” and “criminal threats” refer to specific offenses in the code. If the word “criminal” were removed, use of the words “threat” or “menace” in other contexts could create confusion as to whether they refer to the specific offenses, or to a more general meaning of the words. However, he said that careful drafting may be able to avoid such confusion and “criminal” in the title is not necessary.
  - ii. The PDS representative said that she agreed that “criminal” probably wasn’t necessary as a modifier for those offenses.
  - iii. The OAG representative added that he would still prefer to omit the word “criminal,” and avoid using the terms “threat” or “menace” elsewhere in the code except in reference to the specific offenses.
- b. The OAG representative asked whether the effective consent defense to criminal threats applies to the threat itself, or to the threatened assault or damage to property.
  - i. The Executive Director stated that the effective consent defense is intended to apply to the threat itself, not the underlying conduct, and that added language to the commentary could clarify this point. He noted, however, that fact patterns may occur where the consent applies to both the underlying conduct and the oral threat.

### **IV. The Advisory Group discussed First Draft of Report #14: Recommendations for Definitions for Offenses Against Persons.**

- a. The PDS representative asked whether an object’s “actual, attempted, or threatened use is likely to cause death or serious bodily injury” is a question of fact or law.
  - i. The Executive Director replied that it is a question of fact, both under current law and in the draft definition of a “dangerous weapon.”
- b. The PDS representative also argued that applying strict liability under offenses against persons as to whether the object used was a “dangerous weapon” could lead to unjust outcomes. The PDS representative suggested that some culpable mental state should apply to whether the object used was a “dangerous weapon.”
  - i. The Executive Director noted that the draft definition sought to track current case law on this point.

### **V. Adjournment.**

- a. The meeting was adjourned at 11:10 AM. Audio recording of the meeting will be made available online for the public.