



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

WEDNESDAY, JUNE 26, 2019, at 10:00 AM
CITYWIDE CONFERENCE CENTER, 11th FLOOR OF 441 4th STREET NW
WASHINGTON, D.C. 20001

On Wednesday, June 26, 2019, 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 richard.schmechel@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)	Michael Serota (Sr. Attorney Advisor)
Jinwoo Park (Attorney Advisor)	Patrice Sulton (Attorney Advisor)
Rebecca Fallk (Intern)	Melissa Barbee (Intern)

Advisory Group Members and Guests in Attendance:

Katarina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)	Dave Rosenthal (Representative of the Attorney General's Office)
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Elana Suttentberg (Visiting Attendee of United States Attorney for the District Columbia)

I. Welcome and Announcements.

- a. The Executive Director noted that the Advisory Group next meeting will be on July 31, 2019, at 10:00 a.m. The agenda will address comments received on the First Draft of Report #36. The agenda also will address the recommendations on controlled substances and/or firearms that will be issued next. There will be at least 4 weeks before written comments on these new recommendations are due. The recommendations may be released together or staggered.
- b. The Executive Director will be less accessible in early July. Please contact Jinwoo Park or Patrice Sulton with any urgent questions.

II. The Advisory Group discussed First Draft of Report #36, Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code and Advisory Group Memo #22 Supplemental Materials to the First Draft of Report #36.

- a. The Executive Director noted that USAO submitted updated written comments on Report #36 on June 19, 2019.
- b. OAG asked for clarification as to whether the revised blocking a public way offense (RCC § 22E-4203) applies to a person who is standing at a private entryway. Staff clarified that the offense is limited to government-owned land and buildings. Unwanted entries onto private property remain separately criminalized as trespass (RCC § 22E-2601).
- c. USAO asked for clarification of the rationale for how enhancements for firearms will appear and operate in the RCC, noting that some offenses retain the enhancements that exist under current law while others do not.
 - i. Staff explained that this organizational and substantive question serves many purposes and the overall effect of this treatment of firearm enhancements should be clearer after the weapons offense and penalties recommendations are issued soon.
 - ii. Currently, the RCC uses either sentencing gradations or penalty enhancements to amplify the maximum sentence for certain offenses against persons (e.g., robbery, assault, sex assault). After additional recommendations are issued, it will be easier to assess how the various enhancements stack and magnify other penalty enhancements.
 - iii. The forthcoming weapons recommendations will also include liability for possessing a firearm in connection with certain crimes, akin to the current PFCV offense.
 - iv. The RCC burglary offense does not currently include an elevated gradation or an enhancement for displaying or using a weapon, as the crime does not require any interaction with a person and empirical research shows such encounters are relatively rare. However, the Commission expects that there will be additional liability for possessing a firearm in connection with commission of burglary—per the forthcoming firearm offense recommendations. The Commission may revisit that burglary recommendation after the weapons recommendations are issued.
- d. OAG recommended reordering the unlawful labeling of a recording offense (RCC § 22E-2207), so that it appears either at the end of the fraud chapter or at the end of the theft chapter, so that it more logically follows related offenses.
- e. USAO requested a one- or two-week extension for written comments on Report #36.
 - i. The Executive Director responded that the Commission is unable to accommodate an extension for this round of written comments. Hopefully at the September meeting the Commission will be able to provide an update on the sequence of work for the next year to aid members' prioritization of their reviews.
- f. OAG asked for clarification as to why rioting (RCC § 22E-4301) requires seven people whereas failure to disperse (RCC § 22E-4302) requires eight.

- i. Staff explained that rioting requires the defendant participate in a melee of eight people in total, whereas failure to disperse require the defendant refuse to leave the immediate vicinity of a melee of the same size.
- g. USAO asked for clarification as to the intended effect of the bracketed jury trial provisions.
 - i. Staff explained the bracketed language signals an intent to provide a jury trial irrespective of the penalty assigned at a later date. These are offenses that frequently involve the exercise of civil liberties and are noted in the commentary. There will be a further opportunity to comment on jury demandability after penalties recommendations are issued.

III. Adjournment.

- a. The meeting was adjourned at 10:34 a.m.