



**D.C. Criminal Code Reform Commission**  
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**ADVISORY GROUP MEMORANDUM #16**

**To:** Code Revision Advisory Group  
**From:** Criminal Code Reform Commission (CCRC)  
**Date:** March 16, 2018  
**Re:** Supplemental Materials to the First Draft of Report #18

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This Advisory Group Memorandum No. 16 supplements the First Draft of Report No. 18, Solicitation and Renunciation (Report No. 18). It provides an overview of Report No. 18 and sentencing data relevant to the recommendations contained in Report No. 18.

**I. OVERVIEW OF REPORT NO. 18**

Report No. 18 is comprised of draft legislation and commentary addressing two general provisions: (1) RCC § 22A-302, Solicitation; and (2) RCC § 22A-304, Renunciation Defense to Attempt, Conspiracy, and Solicitation.

The first of these draft general provisions addresses the elements of a criminal solicitation under the Revised Criminal Code (RCC). It is comprised of three subsections: (1) RCC § 22A-303(a), Definition of Solicitation; (2) RCC § 22A-302(b), Principles of Culpable Mental State Elevation Applicable to Results and Circumstances of Target Offense; and (3) RCC § 22A-302(c), Uncommunicated Solicitation.

Collectively, these provisions offer recommendations concerning the conduct requirement of general solicitation liability, the culpable mental state requirement of general solicitation liability, and the target offenses to which general solicitation liability attaches. They also address the issue of an uncommunicated solicitation, which arises where the intended recipient of the defendant's command, request, or efforts at persuasion never receives the communication due to external factors (e.g., police interference or carrier malfeasance).

Generally, the substantive solicitation policies reflected in these recommendations translate and fill gaps in current District law. These recommendations are not intended, however, to resolve all policy issues relevant to treatment of criminal solicitations under the RCC. Left unaddressed by these recommendations, for example, are at least two important topics that the CCRC plans to consider at a future date. The first is the grading of a criminal solicitation under the RCC.<sup>1</sup> The second is the definition of a "crime of violence" under the RCC.<sup>2</sup>

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<sup>1</sup> Although the staff is not currently prepared to make a recommendation on this topic, an approach similar to that applied to criminal attempts under RCC § 301—namely, a one-half penalty reduction—may be proposed.

<sup>2</sup> Note that the proposed criminal solicitation statute, like the District's current criminal solicitation statute, is limited to "crimes of violence." Compare RCC § 302(a)(3) with D.C. Code § 22-2107(b). However, the

The second draft general provision proposed in Report No. 18 addresses the availability of a renunciation defense to the general inchoate crimes of attempt, solicitation, and conspiracy. It is comprised of three sub-sections: RCC § 22A-304(a), Defense for Renunciation Preventing Commission of the Offense; (2) RCC § 22A-304(b), Voluntary and Complete Renunciation Defined; and (3) RCC § 22A-304(c), Burden of Proof for Renunciation.

The first of these subsections, RCC § 304(a), establishes the primary components of a renunciation defense, namely, that (1) the target of an attempt, solicitation, or conspiracy did not occur; (2) the defendant engaged in conduct sufficient to prevent commission of the target offense; and (3) the defendant's conduct occurred under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent. The second of these subsections, RCC § 304(b), thereafter provides further clarity on the meaning of "voluntary and complete" in the context of a renunciation defense. The third and final subsection, RCC § 304(c), establishes that the burden of proof applicable to a renunciation defense lies with the defendant and is subject to a preponderance of the evidence standard.

Generally, the substantive renunciation policies reflected in these recommendations fill gaps in current District law. The current state of District law concerning the renunciation defense is unclear—there does not appear to be any District legal authority directly addressing the issue in the context of an attempt, solicitation, or conspiracy prosecution. At the same time, some District authority relevant to the renunciation defense exists—namely, the case law governing a withdrawal defense to conspiracy and accomplice liability—providing modest support for its recognition. The proposed legislation accords with that authority, as well as with national legal trends, which support recognition of a broadly applicable (but narrowly circumscribed) renunciation defense to the general inchoate crimes of attempt, solicitation, and conspiracy.

## II. SUMMARY STATISTICS ON CRIMINAL SOLICITATION

In early 2018, the CCRC received data from the D.C. Superior Court pursuant to a data request filed earlier in the year. The data pertain to all adult criminal dispositions in Superior Court from 2010 through 2016.<sup>3</sup> The CCRC has performed preliminary analysis of this data, with help from the Lab in the Office of the City Administrator. The statistics provided below are based on the CCRC and Lab analysis, which is subject to the following caveats.

First, there is a possibility of error in the analysis due to CCRC misinterpretation of codes in the data. The Superior Court does not currently have a publicly-available data

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CCRC staff has yet to develop a recommendation as to the specific offenses that are within the scope of the "crime of violence" definition under the RCC.

<sup>3</sup> Because of the nature of the request, some cases and charges from years prior to 2010 are included in the dataset. These cases appear where the final disposition or sentencing occurred in the 2010 to 2016 range. For example, a defendant charged with robbery in 2009 who is then sentenced for the case in 2010 would be present in the data the CCRC received. However, a defendant charged with robbery in 2009 who is sentenced for the case in 2009 would *not* be present. In other words, the dataset provides only a portion of cases prior to 2010.

dictionary that explains the meaning of its data codes. While some data fields are easily identifiable on their own terms (e.g., “charge\_code” refers to the statute citation within the D.C. Code for a given offense, while “charge\_description” is the general name for the offense), others are not.

Second, some relevant statistics cannot be reported per the CCRC’s Data Use Agreement (DUA) with the Superior Court. One of the DUA’s terms requires that reports produced by CCRC will not contain a table with a cell indicating a value less than twenty. The purpose of this provision is to ensure that no statistical work is done on a sample size too small to give meaningful information. Therefore, in some of the figures below, if a value would be less than twenty, the figure will so indicate with the following notation: “< 20.”

Third, the analysis may undercount solicitation charges and convictions to the extent that offense-specific solicitation charges and convictions are not included. For example, the District’s contributing to the delinquency of a minor offense, D.C. Code § 22-811, prohibits, among other acts, “an adult, being 4 or more years older than a minor” from “solicit[ing]” that minor to commit a crime.<sup>4</sup> Likewise, D.C. Code § 22-2701 makes it “unlawful for any person to . . . solicit for prostitution,” while D.C. Code § 22-951 makes it “unlawful for a person to solicit . . . another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang.”<sup>5</sup> The analysis below focuses only on the District’s general solicitation statute, D.C. Code § 2104.02.

With these caveats, the CCRC analysis of the frequency of offenses against persons charges and convictions is as follows:

<b>2010-2016 (7 years) Total Adult Dispositions in Superior Court</b>			
<b>Charge Code</b>	<b>Charge Description</b>	<b># Charges</b>	<b># Convictions</b>
	<b>Solicitation</b>		
22DC2104.02(A)	Soliciting Murder	<20	<20
22DC2104.02(B)	Soliciting a Violent Crime	<20	<20

<sup>4</sup> See also D.C. Code § 22-3010(b)(1) (“Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts . . . to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact . . .”)

<sup>5</sup> Relatedly, D.C. Code § 22-1312 criminalizes an “indecent sexual proposal,” which, as the DCCA has explained, “connotes virtually the same conduct or speech-conduct as a sexual solicitation.” *Pinckney v. United States*, 906 A.2d 301, 307 (D.C. 2006) (quoting *D.C. v. Garcia*, 335 A.2d 217, 221 (D.C. 1975)); see *D.C. v. Garcia*, 335 A.2d 217, 221 (D.C. 1975) (noting that a “sexual proposal,” as used in the statute, “connotes virtually the same conduct or speech-conduct as a sexual solicitation; the term clearly implies a personal importunity addressed to a particular individual to do some sexual act.”).

## APPENDIX A: RELEVANT DISTRICT CRIMINAL STATUTES

### **D.C. Code § 22-2107:**

(a) Whoever is guilty of soliciting a murder, whether or not such murder occurs, shall be sentenced to a period of imprisonment not exceeding 20 years, a fine not more than the amount set forth in § 22-3571.01, or both.

(b) Whoever is guilty of soliciting a crime of violence as defined by § 23-1331(4), whether or not such crime occurs, shall be sentenced to a period of imprisonment not exceeding 10 years, a fine not more than the amount set forth in § 22-3571.01, or both.

## APPENDIX B: RELEVANT REDBOOK INSTRUCTIONS

### **Criminal Jury Instructions for the District of Columbia, Instruction No. 4.240— Solicitation of Murder (5th ed. 2017):**

The elements of solicitation of murder, each of which the government must prove beyond a reasonable doubt, are that:

1. [Name of defendant] solicited [another person] [insert name of other person] to murder [name of prospective victim]; and
2. [Name of defendant] did so voluntarily and on purpose and not by mistake or accident.

“Solicit” means to request, command, or attempt to persuade.

It is not necessary that the murder actually occur in order to find [name of defendant] guilty of solicitation of murder.

### **Criminal Jury Instructions for the District of Columbia, Instruction No. 4.500— Solicitation of a Crime of Violence (5th ed. 2017):**

The elements of solicitation of [insert crime of violence], each of which the government must prove beyond a reasonable doubt, are that:

1. [Name of defendant] solicited [another person] [insert name of other person] to commit [insert crime of violence]; and,
2. [Name of defendant] did so voluntarily, on purpose, and not by mistake or accident.

“Solicit” means to request, command, or attempt to persuade.

It is not necessary that [insert crime of violence] actually occur in order to find [name of defendant] guilty of solicitation.