



D.C. Criminal Code Reform Commission
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ADVISORY GROUP MEMORANDUM #36

To: Code Revision Advisory Group
From: Criminal Code Reform Commission (CCRC)
Date: May 18, 2020
Re: Supplemental Materials to the First Draft of Report #54 – Prostitution and Related Statutes

The CCRC recommendations in the First Draft of Report #54 – Prostitution and Related Statutes include a variety of changes to existing law on prostitution detailed in the report commentary. These changes include distinguishing liability for those selling sex and those buying sex, reducing the maximum statutory penalty for those selling sex, eliminating the special recidivist penalties for those selling sex, and eliminating vehicle impoundment and civil asset forfeiture provisions for those selling sex. The revised trafficking in commercial sex statute, RCC § 22E-4403, also includes a variety of changes, including penalty changes that more clearly distinguish the seriousness of conduct under RCC § 22E-4403 (involving sale of consensual sex) from the RCC human trafficking and sexual assault statutes (involving non-consensual sex and its sale).

These CCRC recommendations are intended to create a sharp division in punishment of the sale of consensual versus non-consensual sex, reducing penalties for the former while retaining severe felony penalties for the latter. Old District statutes¹ that do not distinguish between sale of consensual and non-consensual sex are disproportionate and the conduct covered by these statutes has been broken up, with non-consensual sex provisions in the current prostitution statutes being addressed now under the RCC human trafficking and sexual assault statutes. As Advisory Group members review the changes to the RCC prostitution offenses, please bear in mind the recommendations for these other RCC statutes.

However, the CCRC recommendation continues to criminalize consensual sex work by adults. The CCRC is well aware that this issue has been the subject of recent debate before the Council.² The CCRC recommendations are not intended to foreclose consideration of the decriminalization of consensual sex work by adults. On the contrary, the CCRC supports additional future consideration of whether to decriminalize consensual adult sex work. At this time, however, it is hoped that the CCRC recommendations will address apparent points of agreement by many in the debate over decriminalization—about the need to overhaul the District’s outdated prostitution statutes, to recognize differences between consensual adult sex

¹ See, e.g., D.C. Code § 22-2705, Pandering; inducing or compelling an individual to engage in prostitution (penalizing equivalently attempting to entice any person to engage in prostitution (consensual) and detaining a person against their will with intent to compel the person by force to marry the abductor (non-consensual)).

² See, Public Hearing on B23-0318, Community Safety and Health Amendment Act of 2019 (available at http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5186).

work and conduct involving non-consensual work, and to continue to ensure serious penalties are available for any type of non-consensual sex work.

In addition to the court statistics on prostitution offenses previously provided to the Advisory Group,³ please note that prostitution was part of the CCRC's public opinion survey.⁴ Specifically, District voters were asked to assign a ranking to the seriousness of "Offering to have sexual intercourse with a consenting adult for money."⁵ The most frequent (modal) response, selected by 43.7% of recipients, was "0," a rating that was equivalent on the chart provided to respondents to: "Not a crime (e.g., a speeding ticket)." The median response was a "1," a rating significantly below a rating of "2" which equivalent on the chart provided to respondents to the harm of causing a "non-painful physical contact (e.g., pushing someone around)." Due to some respondents' quite high rankings, the mean response was a "2.2."

³ CCRC Advisory Group Memorandum #28 - DC Superior Court Criminal Division Adult Charges and Convictions Disposed (available at <https://ccrc.dc.gov/page/ccrc-documents>).

⁴ CCRC Advisory Group Memo #27 – Public Opinion Surveys on Ordinal Ranking of Offenses (October 10, 2019) (available at <https://ccrc.dc.gov/page/ccrc-documents>).

⁵ *Id.* Question 1.25.