



D.C. Criminal Code Reform Commission

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MEMORANDUM #1

To: Code Revision Advisory Group (CRAG)
From: CCRC Executive Director
Date: November 2, 2016
Re: Overview of CCRC and CRAG Draft Work Plan

I. CCRC Mandate, Draft Work Plan & Draft Schedule

A. CCRC Mandate¹

(a) By October 1, 2018, the Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to:

- (1) Use clear and plain language;
- (2) Apply consistent, clearly articulated definitions;
- (3) Describe all elements, including mental states, that must be proven;
- (4) Reduce unnecessary overlap and gaps between criminal offenses;
- (5) Eliminate archaic and unused offenses;
- (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties;
- (7) Organize existing criminal statutes in a logical order;
- (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
- (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment;
- (10) Propose such other amendments as the Commission believes are necessary; and
- (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

(b) The comprehensive criminal code reform recommendations required by subsection (a) of this section shall be in the form of a report that:

- (1) Includes draft legislation or other specific steps for implementing the recommendations;

¹ Criminal Code Reform Commission Establishment Act of 2016, Bill 21-669, Section 3123, Fiscal Year 2017 Budget Support Act of 2016 (June 21, 2016).

- (2) Includes charging, sentencing, and other relevant statistics regarding the offenses affected by the recommendations; and
 - (3) Explains how and why the recommendations change existing District law.
- (c) In preparing the comprehensive criminal code reform recommendations required by subsection (a) of this section, the Commission shall:
- (1) Consult with the Code Revision Advisory Group established pursuant to section 3124; and
 - (2) Review criminal code reforms in other jurisdictions, recommend changes to criminal offenses by the American Law Institute, and survey best practices recommended by criminal law experts.

B. Draft CCRC Work Plan & Draft Schedule

This work plan and schedule is a draft provided to the CRAG as an indication of the likely workflow and is subject to change. A final work plan is under development and will be included in the CCRC Annual Report to the Council (by March 31, 2017).

Phase 1. Perform technical clean-up of Title 22 and crimes in other titles of the D.C. Code.

- *Goal:* Address several CCRC mandates, clearing path for further reform.
- *Key Components:* 1. Repeal of archaic and unused statutes; 2. Technical amendments to outdated language; 3. Amendment of provisions held to be unconstitutional; 4. Repeal of common law offenses; 5. Relocation of Title 22 statutes; 6. Enactment of Title 22.
- *Notes:* Draft legislation will be similar to the prior (September 2015) Sentencing Commission submission to the Council.
- *Draft Schedule:*
 - First Draft of Report Submitted to CRAG: 11/2/16.
 - CRAG Comments on First Draft Due: 1/4/17.
 - CRAG vote on Final Report: Jan./Feb. 2017 (TBD).

The recommendations developed in Phase 1 will be submitted to the Council and Mayor in February 2017. The final recommendations shall consist of: 1) a report summarizing the proposed changes; 2) appendices containing more detailed information on the proposed revisions, any CRAG comments, and relevant crime statistics; and 3) an appendix containing a draft bill that would enact the proposed changes into law.

Phase 2. Draft a General Part for a new Title 22A.

- *Goal:* Create standard rules, definitions, and requirements for establishing liability that will apply to all reformed offenses, and a coherent classification scheme for grading offenses and setting penalties.
- *Key Components:* 1. Organization of Title 22A; 2. Preliminary provisions (e.g., short title and rules of construction); 3. Basic requirements of offense liability (e.g., mental states and

voluntariness); 4. Imputation of offense elements (e.g., voluntary intoxication and willful blindness); 5. Inchoate crimes (attempts); 6. Sentencing Provisions (e.g. penalty classes and penalty enhancements).

- *Notes:* Draft language for many provisions will be similar to prior Sentencing Commission work, but there will be several new provisions. Additional general provisions addressing the imputation of offense elements (e.g. accomplice liability) and inchoate liability (e.g., conspiracy and solicitation) will be proposed later in 2017 or 2018. A CRAG vote is needed to set the General Part before beginning Phase 3 reforms, but if work on Phase 3 or Phase 4 shows a need for a substantive revision of the General Part, the Executive Director may call for another CRAG vote on such revisions.
- *Draft Schedule:* (schedule for additional actions TBD)
 - First Draft Report on basic requirements of offense liability submitted to CRAG: Dec. 2016.
 - CRAG comments on First Draft Report on basic requirements of offense liability due: Jan./Feb. 2017.
 - First Draft Report on other components of general part submitted to CRAG: Feb. 2017.
 - CRAG comments on First Draft Report on other components of general part due: Mar./Apr. 2017.
 - CRAG vote on combined, revised report on General Part provisions: May 2017.

Phase 3. Draft reforms to specific offenses in the new Title 22A.

- *Goal:* Modernize the structure and language of District offenses, incorporating the new draft General Provisions.
- *Key Components:* 1. Offenses against property; 2. Drug offenses; 3. Offenses against persons; 4. Offenses against public order.
- *Notes:* Clusters of similar offenses will be examined and reformed together. Priority will be given to the most serious and commonly charged non-weapon offenses.
- *Draft Schedule:* (schedule for additional actions TBD)
 - First Draft Report on offenses against property submitted to CRAG: May 2017;
 - First Draft Report on drug offenses submitted to CRAG: Jul. 2017;
 - First Draft Report on offenses against persons submitted to CRAG: Nov. 2017;
 - First Draft Report on offenses against public order submitted to CRAG: Mar. 2018.

Phase 4. Modify reformed offenses' penalties, as necessary, to be proportionate.

- *Goal:* Make offense penalties reflect current District values about offense severity.
- *Key Components:* 1. Ordinal ranking of offense severity; and 2. Classify Title 22A specific offenses using the ordinal ranking.
- *Notes:* Offenses differ significantly in the extent to which they may require changes. Assessing the relative seriousness of offenses involves review of dozens of variables, including statistics about current sentencing practices in the District.

- *Draft Schedule:* (schedule for additional actions TBD)
 - First Draft Report on offense ranking submitted to CRAG: Dec. 2017;
 - First Draft Report on classification Title 22A offenses submitted to CRAG: Mar. 2018.

The recommendations developed in Phases 2-4 will be submitted to the Council and Mayor by the statutory deadline of September 30, 2018. The final recommendations shall consist of: 1) a draft bill that enacts a new Title 22A, consisting of reformed criminal statutes and repealing corresponding offenses in Title 22; 2) a concise commentary (suitable for adoption as legislative history) explaining how and why the sections of Title 22A change existing District law; 3) CRAG members' individual written comments; and 4) charging, sentencing, and other relevant statistics regarding offenses affected by the recommendations.

The final recommendations will be accompanied by a report from the CCRC on the need for comprehensive criminal code reform. The final recommendations may also be accompanied by a summary statement approved by the CRAG similar to that used by the federal National Commission on Reform of Federal Criminal Laws when transmitting its recommendations to Congress in 1971.²

II. Discussion of CRAG Review Process

Overview of Consultation Process

- **STEP #0. EARLY CONSULTATION.** All CRAG members are requested to communicate concerns about District criminal statutes to the CCRC, suggest reforms, and submit draft reform language before first draft reports on the relevant topics are issued. When creating its first draft of a report the CCRC will consider such member input along with other information, as per its statute; the first draft report may not follow the CRAG member's position.
- **STEP #1. FIRST DRAFT REPORT ISSUED.** The CCRC will email to all CRAG members a first draft report containing reform recommendations. Additional background research and relevant statistics may be included in the draft report.

² See *Final Report of the National Commission on Reform of Federal Criminal Laws*, 1971:

“To the President and Congress:

I hereby transmit to you the Final Report of the National Commission on Reform of Federal Criminal Laws pursuant to Section 8 of Public Law 89-0801, as amended by Public Law 91-39.

The Commission submits this proposed revision of Title 18, United States Code as a work basis upon which the Congress may undertake the necessary reform of the substantive federal criminal laws. The scope and organization of the proposed Code, its general approach to the problem of federal jurisdiction, and the basic outlines of its sentencing system, hold promise as a logical framework for a twentieth century penal code. Individually we have reservations, sometimes strong, on the resolution of particular issues. Nevertheless, we are, as a Commission, satisfied that the provisions embodied in the text, together with their noted alternatives, fairly expose the relevant policy issues and should facilitate the necessary legislative choices by the Congress.

It is to be hoped that this work of reform, so necessary to the fair and effective administration of justice, may merit due consideration of the Congress and that it will contribute to the resolution, on a constructive basis, of these difficult issues.

By Direction of the Commission.

- STEP #2. CRAG COMMENT ON FIRST DRAFT REPORT. All CRAG members may submit written comments on a first draft report. The deadline for written comments will be specified in the email delivering a first draft report, but shall be no less than one month from the date of delivery, per the statute. During the period for written comments there typically will be a CRAG meeting where oral discussion of the first draft will occur. On request, the CCRC also will discuss the first draft with individual CRAG members and/or their agencies.
- STEP #3. SECOND DRAFT REPORT ISSUED. The CCRC will revise the first draft report based on written comments that are timely received from CRAG members. Late written comments will not be accepted as a basis for CCRC revision. The CCRC will then circulate a second draft to all CRAG members (including a copy of any CRAG comments).
- STEP #4. CRAG VOTE. Voting CRAG members either A) will approve the second draft report and the recommendations therein will become final recommendations for the Council and Mayor, or B) will disapprove the new draft report. If disapproved, staff will prepare a third draft report based on the Step #2 written comments and recirculate it for approval by voting CRAG members.
- STEP #5. CRAG COMMENT ON FINAL RECOMMENDATIONS. All CRAG members may submit written comments on the final recommendations that will be submitted to the Council and Mayor. These comments are in addition to (and may differ from) any comments that CRAG members submit on first drafts per Step #2, above. The deadline for written comments on the final recommendations will be set in advance by the Executive Director.

Additional Notes

- While the CCRC statute is the foundation of the CRAG consultation process, the above process includes additional opportunity for CRAG member comments. Please contact the Executive Director about further ways to enhance members' ability to provide input or improve the efficiency of the CRAG consultation process.
- In providing written comments on a draft report, CRAG members are strongly encouraged to provide new or alternative statutory language that would reflect their desired position.
- Because the CCRC aims to develop reform recommendations that are cohesive and clear, it is not expected that draft reports will regularly include alternative recommendations. (Individual members always may include their alternative recommendations in their comments, which will be part of the record.) However, at its discretion the CCRC may include alternative recommendations in a Draft Report to secure a majority vote (e.g., on a highly fractious issue needing a plurality) or to secure consensus among CRAG voting members (e.g. where an alternative is consistent with other recommendations and would garner two minority votes).
- At this time it is undecided whether there will be multiple votes in Phase 3 and Phase 4, or one comprehensive vote on the recommendations developed during those phases. The CCRC would appreciate CRAG input on the desirability of either approach.
- Voting by proxy will be allowed, as long as there is prior written communication from the absent CRAG member to the Executive Director designating the person given the proxy vote.