



D.C. Criminal Code Reform Commission

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ADVISORY GROUP MEMORANDUM #30

To: Code Revision Advisory Group
From: Criminal Code Reform Commission (CCRC)
Date: February 19, 2020
Re: Supplemental Materials to the First Draft of Report #50

This Advisory Group Memorandum (Memo) supplements the First Draft of Report #50, *Cumulative Update to the Revised Criminal Code Other than Chapter 6* (February 19, 2020) (Report) with directions on submission of written comments and relevant information on the organization and scope of the Report and various background materials.

Submission of Written Comments on the First Draft of Report #50

The CCRC requests that Advisory Group members' written comments on the First Draft of Report #50 focus on new changes that are presented for the first time in this Report. Please refrain from repeating prior comments that were not incorporated in this Report; all prior comments have been preserved in the record that will be presented to the Council and Mayor.

Report Organization & Scope.

- *Due to the volume of materials, the statutory language is not repeated before each commentary entry. Instead, the compilation of draft RCC statutes is intended to be read alongside the commentary.*
- *RCC statutes in Chapter 6, Offense Classes, Penalties, & Enhancements are highlighted in gray to indicate that they are not subject to review as part of this Report, and the Commentary to Chapter 6 is omitted. An update to Chapter 6 will be issued in March 2020 (before comments are due on the First Draft of Report #50). The CCRC also plans to include one new OAG offense, Indecent Sexual Proposal of a Minor, at a later date. The statute will track the RCC § 22E-1305, Enticing a Minor into Sexual Conduct offense that has USAO jurisdiction.*
- *Unlike many prior reports, this Report does not include a section comparing the revised statute to national legal trends. Prior sections comparing RCC statutes to national legal trends have been compiled in Appendix J at the end of this Memo,*

as reference material.¹ Such other jurisdiction analyses may be submitted to the Council and Mayor as background materials, but will not be part of the RCC statutory language and Commentary that the Advisory Group is asked to vote upon.² Going forward, the CCRC intends to continue providing the Advisory Group with a national legal trends analysis on new draft recommendations when time permits and such analysis is helpful.³

- *While offense-specific recommendations on merger largely⁴ have been omitted from this Report, further recommendations may be released in 2020 regarding merger of specific offenses.* Some prior draft RCC recommendations included a range of offense-specific merger provisions that were not included in the statutory language and commentary in this Report. This omission does not reflect a final decision to omit such language from draft recommendations, but rather a decision to solidify RCC § 22E-214, Merger of Related Offenses and offenses in the Special Part, before reevaluating offense-specific merger provisions.
- *There are two DCCA cases that the CCRC is still examining and may require changes to its recommendations: In re Prosecution of Nicco Settles, 218 A.3d 235 (D.C. 2019) (regarding determination of prosecutorial authority over District offenses); and Fleming v. United States, 2020 WL 488651, (D.C. 2020) (en banc) (regarding causation generally and specifically for second degree non-felony murder).*
- *There are several notable changes to the General Part that have implications for many Special Part offenses:*
 - First, the Report provides, for the first time, commentary to accompany the special responsibility and effective consent general defenses. See RCC § 22E-408 and § 22E-409.
 - Second, the rules of construction have been clarified so that “in fact” (strict liability) applies to all subsequent elements until another defined culpable mental state is specified. Staff has reviewed prior drafting to ensure the drafting conforms with this clarification.

¹ However, please note that such national legal trends materials are not being updated to track changes in national legislation, nor do they necessarily address new changes to the RCC statutory text.

² The consideration of national legal trends in the formulation of reform recommendations is part of the agency’s mandate, but the agency’s deliverables to the Council and Mayor do not include such analysis. See D.C. Code § 3-152 (“(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; (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 § 3-153; 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.”).

³ However, as the particular statutes that remain for revision go beyond the general provisions, offenses against persons, and property offenses that are at the heart of the common law and the Model Penal Code, analysis of other jurisdictions can be extremely complex and of dubious value. State weapon, drug, and public order laws, in particular, vary widely in their structure and details.

⁴ E.g., RCC § 22E-1401, Kidnapping, still contains an offense-specific merger provision in this Report.

- Third, the CCRC has sought to specify any culpable mental states (or strict liability) in defenses and exclusions from liability. Some defenses may not have been updated, but this will be completed before final recommendations are developed.
- Fourth, the general provision regarding solicitation (§ 22E-302) has been revised to apply to all offenses against persons (beyond “crimes of violence”).
- *The CCRC expects the agency’s final recommendations to the Mayor and Council to follow the general format and presentation of the Report (RCC statutory language and Commentary) with additional information arranged in a manner corresponding to the Appendices in this Memo.* Consequently, Advisory Group comments on this format and presentation are welcome. Additional (future) appendices containing statistical information and a bill-form of the recommended statutory language are also planned.

Appended Background Materials.

- *Appendix A, Comparison of Report #50 Draft Statutes to Prior Draft Statutes,* provides marked-up, red-ink copies of all statutes in the Report that compare the current statute to the last draft that was distributed to the Advisory Group. Review of this document is the most expeditious way to see what changes the update has made to RCC statutes. In case of a discrepancy between this Appendix and the clean statutory language in Report #50, please email CCRC staff but assume the clean statutory language is correct.
- *Appendix B, Table of Advisory Group Draft Documents,* provides a table listing all RCC draft reports and memoranda distributed to the Advisory Group, to date.
- *Appendix C, Advisory Group Comments on Draft Documents,* compiles the Advisory Group written comments received by the CCRC, to date.
- *Appendix D1, Disposition of Advisory Group Comments & Other Changes to Draft Documents,* provides information on the CCRC staff’s disposition of Advisory Group written comments, and other changes recommended by the CCRC staff on RCC sections that are the subject of the Report.
- *Appendices E-I* are not included in this report, but are reserved for future distribution of statistics and penalty-related matters.
- *Appendix J, Research on Other Jurisdictions’ Relevant Criminal Code Provisions,* compiles the relation to national legal trends entries previously produced by the CCRC staff in conjunction with prior drafts of the statutes addressed in the Report.