



FY 2017 Fourth Quarter Report

SUBMITTED TO THE COUNCIL
November 20, 2017

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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PREFACE

The Criminal Code Reform Commission (CCRC) submits this quarterly report summarizing its recent activities, as required by statute.¹ This report concerns the fourth quarter of FY 2017, from July 1 through September 30, 2017. The CCRC's last quarterly report, on the third quarter of FY 2017, was submitted to the Council August 29, 2017.²

CCRC STATUTORY AUTHORITY

The CCRC began operation as a new, independent District agency on October 1, 2016, pursuant to the Council of the District of Columbia's Fiscal Year 2017 Budget Support Act of 2016. The CCRC is tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations to revise the language of the District's criminal statutes within specified parameters, with a statutory deadline of October 1, 2018.³ In preparing these reform recommendations, the CCRC is required to consult with a Code Revision Advisory Group (Advisory Group), a statutorily designated group of stakeholders who review and provide information and suggestions on proposals prepared by the CCRC. The Advisory Group consists of 5 voting members and 2 nonvoting members.⁴ Approval by a majority of the Advisory Group is required for final recommendations to be submitted to the Council and the Mayor.⁵ In

¹ D.C. Code Ann. § 3-154(a) ("The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter.").

² Available online at <http://lims.dccouncil.us/Legislation/RC22-0079?FromSearchResults=true>.

³ The CCRC's mandate states:

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.

D.C. Code § 3-152(a).

⁴ The current voting members of the Advisory Group are: Don Braman, Associate Professor of Law, George Washington University School of Law (Council Appointee); Paul Butler, Professor of Law, Georgetown University Law Center (Council Appointee); Renata Kendrick Cooper, Special Counsel for Policy and Legislative Affairs, United States Attorney's Office for the District of Columbia (Designee of the United States Attorney for the District of Columbia); Laura Hankins, General Counsel, Public Defender Service for the District of Columbia (Designee of the Director of the Public Defender Service for the District of Columbia); and Dave Rosenthal, Senior Assistant Attorney General, Office of the Attorney General (Designee of the Attorney General for the District of Columbia). The current non-voting members of the Advisory Group are: Kate Mitchell, Committee Director, Committee on the Judiciary and Public Safety, (Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety); and Helder Gil, Legislative and Policy Advisor, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

⁵ D.C. Code § 3-153(e).

preparing its reform recommendations the CCRC also reviews criminal code reforms in other jurisdictions, changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.⁶

NOTABLE CCRC ACTIVITIES JULY – SEPTEMBER 2017

Development of Reform Recommendations

The CCRC’s work to develop recommendations for reform of District criminal statutes is guided by the Work Plan and Schedule that was first provided to the Council on February 9, 2017, as part of the agency’s Annual Report. The Work Plan and Schedule divides the development of code reform recommendations under the CCRC’s statutory mandate into four Phases. The CCRC’s activities during the fourth quarter of FY 2017 continued its work on Phase 2 (General Provisions for a new Title 22A) and Phase 3 (Reformed Offenses for a new Title 22A) of the Work Plan and Schedule.

As part of Phase 2, the CCRC continued its development of reform recommendations to the Council and Mayor that provide a standard toolkit of rules, definitions, and principles for establishing criminal liability that will apply to all reformed offenses. Such work addresses several of the agency’s statutory mandates.⁷ Specifically, in the fourth quarter, CCRC staff reviewed possible changes to its draft recommendations regarding general penalty enhancements⁸ and attempt liability⁹ in response to Advisory Group comments received by July 21, 2017. Discussion of these draft recommendations and the Advisory Group’s comments were agenda items for the July 5 and September 6 Advisory Group meetings. Specific concerns and solutions were discussed, and few or no major objections were raised as to the core features of the proposed recommendations in the First Drafts of Report No. 6 and No. 7. CCRC staff also began work on draft recommendations regarding conspiracy liability, but these were not released during the fourth quarter.

As part of Phase 3, the CCRC issued its first set of draft reform recommendations for specific District offenses to its Advisory Group for comment. These recommendations were delivered in four draft reports, as follows.

⁶ *Id.*

⁷ D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; ...(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; ...(10) Propose such other amendments as the Commission believes are necessary . . .”).

⁸ The CCRC issued its First Draft of Report No. 6, Penalty Enhancements, on June 7, 2017.

⁹ The CCRC issued its First Draft of Report No. 7, Definition of a Criminal Attempt, on June 7, 2017.

- In its First Draft of Report No. 8, submitted for Advisory Group review on August 11, 2017, the CCRC drafted recommendations for new definitions that will be consistently applied to revised property offenses, a statute concerning aggregation of values and amounts of damage for revised property offenses, and a statute limiting convictions for multiple, related property offenses. These new statutes would replace, in whole or in part, three statutes in the current D.C. Code.¹⁰
- In its First Draft of Report No. 9, submitted for Advisory Group review on August 11, 2017, the CCRC drafted recommendations for revision of various theft and damage to property offenses. The recommendations propose five new theft-type offenses¹¹ and four new damage to property-type offenses¹². These nine new offenses would replace, in whole or in part, eighteen statutes in the current D.C. Code.¹³
- In its First Draft of Report No. 10, submitted for Advisory Group review on August 11, 2017, the CCRC drafted recommendations for revision of various fraud and stolen property offenses. The recommendations propose seven new fraud-type offenses¹⁴ and four new stolen property-type offenses¹⁵. These eleven new offenses would replace, in whole or in part, nineteen statutes in the current D.C. Code.¹⁶
- In its First Draft of Report No. 11, submitted for Advisory Group review on August 11, 2017, the CCRC drafted recommendations for revision of various extortion, trespass, and burglary offenses. The recommendations propose one new extortion

¹⁰ D.C. Code § 22-3201 (definitions), § 22-3202 (aggregation of amounts received to determine grade of offense), and § 22-3203 (consecutive sentences).

¹¹ Theft, Unauthorized Use of Property, Unauthorized Use of a Vehicle, Shoplifting, and Unlawful Creation or Possession of a Recording.

¹² Arson, Reckless Burning, Criminal Damage to Property, Criminal Graffiti.

¹³ D.C. Code § 22-3211 (theft), § 22-3216 (taking property without right), § 22-3215 (unauthorized use of a motor vehicle), § 22-3213 (shoplifting), § 22-3214 (commercial piracy), § 22-301 (arson), § 22-302 (burning one's own property with intent to injure or defraud another person), § 22-3305 (placing explosives with intent to destroy or injure property), § 22-303 (malicious destruction of property), § 22-3303 (grave robbery, buying or selling bodies), § 22-3307 (destroying or defacing public records), § 22-3309 (destroying boundary markers), § 22-3310 (destroying trees or protections thereof on public grounds), § 22-3312.01 (defacing public or private property), § 22-3313 (destroying or defacing building materials for streets), § 22-3314 (destroying cemetery railing or tomb), § 22-3312.04(d) (graffiti), § 22-3312.04(d) (possession of graffiti materials),

¹⁴ Fraud, Payment Card Fraud, Check Fraud, Forgery, Identity Theft, Unlawful Labeling of a Recording, and Financial Exploitation of a Vulnerable Adult.

¹⁵ Possession of Stolen Property, Trafficking of Stolen Property, Alteration of Motor Vehicle Identification Number, and Alteration of Bicycle Identification Number.

¹⁶ D.C. Code § 22-3221 (fraud), § 22-3223 (credit card fraud), § 22-1510 (making, drawing, or uttering check, draft, or order with intent to defraud), §§ 22-3241 - § 22-3242 (forgery), § 22-1402 (recording of deed, contract, or conveyance with intent to extort money), §§ 22-3227.01 - § 22-3227.04; D.C. Code §§ 22-3227.06 - § 22-3227.08 (identity theft), § 22-3214.01 (unlawful labeling of a recording), § 22-933.01 (financial exploitation of a vulnerable adult or elderly person), § 22-3232 (receiving stolen property), § 22-3231 (trafficking stolen property), § 22-3233 (altering or removing motor vehicle identification numbers), and § 22-3234 (altering or removing bicycle vehicle identification numbers).

offense¹⁷ five new trespass offenses,¹⁸ and two new burglary-type offenses¹⁹. These eight new offenses would replace, in whole or in part, eight statutes in the current D.C. Code.²⁰

Discussion of these draft recommendations for reform of District property offenses was part of the CCRC's September 6 and September 19 meetings with the Advisory Group. Advisory Group comments on the first draft property offense recommendations were not due during the fourth quarter of FY 2017. In addition to the abovementioned work on property offenses for Phase 3, staff also began to develop recommendations for revision of dozens of offenses against persons. Such offenses include various forms of assault, robbery, and criminal threats. Recommendations on these offenses were not issued to the Advisory Group during the fourth quarter, however.

When finalized, the recommendations developed in Phases 2 and 3 of the Work Plan will be combined with later work in Phase 4, forming a single, cohesive set of reform recommendations for District crimes in a new Title 22A. The combined, final reform recommendations will be presented in the CCRC's final report to the Council and Mayor by the statutory deadline of September 30, 2018.

Agency Administration & Other Activities

Data. On August 2, 2017, the CCRC completed a Data Use Agreement (DUA) with the D.C. Superior Court in connection with its May 8, 2017 request certain data on District charging, sentencing, and other relevant statistics. The DUA restricts the CCRC's ability to conduct certain analyses on, and share, the requested data. On August 7, 2017 the agency received a data set in response to its May 8, 2017 request to the D.C. Superior Court. Unfortunately, on beginning its analysis the CCRC discovered that the data set did not distinguish charges and convictions for attempt (versus completed) crimes, and only provided the latest sentence for convictions (versus the initial sentence). After consultation with D.C. Superior Court staff, a follow-up data request was made on September 8, 2017 covering for a data set distinguishing these matters. As of September 30 (and the date of this report), an updated data set had not been received. Few analyses can be performed without the additional fields in the new data set.

On September 6, 2017, the agency formally issued a request to the Metropolitan Police Department (MPD), through the Lab at the Office of the City Administrator (OCA), for certain

¹⁷ Extortion.

¹⁸ Trespass, Trespass of a Motor Vehicle, Criminal Obstruction of a Public Road or Walkway, Unlawful Demonstration, and Criminal Obstruction of a Bridge to Virginia.

¹⁹ Burglary and Possession of Burglary and Theft Tools.

²⁰ D.C. Code § 22-3251 (extortion), § 22-3252 (blackmail), § 22-3302 (unlawful entry on property), § 22-1341 (unlawful entry of a motor vehicle), § 22-1307 (crowding, obstructing, or incommoding), § 22-1323 (obstructing bridges connecting D.C. and Virginia), § 22-801 (burglary), and § 22-2501 (possession of implements of crime).

data on District arrests and citations. The data request was not fulfilled by September 30 (but has since been received in early October).

Staffing. In early August 2017 the CCRC's three legal interns completed their work providing *pro bono* legal research in aid of the agency's mission. The CCRC greatly appreciates the contributions of Mr. Jarrell Blakemore (Howard University School of Law), Ms. Melanie Dellplain (Georgetown University Law Center), and Mr. Christopher Herr (Georgetown University Law Center). Subsequently, in September 2017 the CCRC welcomed Mr. Christopher Westfall (Georgetown University Law Center) as a new, part-time legal intern to provide *pro bono* legal research to the agency.

Community Outreach. In September 2017 the CCRC Executive Director and an agency attorney gave a presentation to judges of the District of Columbia Court of Appeals on the agency's mission and recent work. The presentation was followed by a lively discussion during which several judges expressed strong support for the agency's mission.

CONCLUSION

The CCRC's work in the third quarter of FY 2017 focused primarily on preparation and issuance to its Advisory Group of first draft recommendations for dozens of new property offenses that would replace existing statutes. These property offenses include common and serious property crimes such as: theft, extortion, fraud, arson, destruction of property, and burglary. Staff also addressed Advisory Group comments on liability for criminal attempts and began drafting recommendations for criminal conspiracy and offenses against persons such as assault, robbery, and criminal threats.

Pursuant to its earlier data request, the agency also received a Superior Court data set on adult offenses with a disposition date during the years 2010-2016. However, the data set was missing key information and a second data request was issued in September 2017. No response has been received to date. A data request to MPD was also issued in September 2017 and has since been received.

All agency draft recommendations, as well as minutes for the agency's Advisory Group meetings are available on the CCRC website at www.ccrdc.gov. For additional details or questions about the CCRC's activities or operation, please contact the agency's Executive Director, Richard Schmechel.