



D.C. Criminal Code Reform Commission
Budget Oversight Hearing
2019 Testimony

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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Introduction

Thank you for holding this oversight hearing on the D.C. Criminal Code Reform Commission (CCRC). My name is Richard Schmechel. I am the agency's Executive Director and I'm happy to testify today on behalf of the agency. I will keep my testimony brief. For more information I would like to note that the agency's 2018 Annual Report, and all the agency's draft recommendations for code reform to date, are posted on the agency's website, www.ccrdc.dc.gov. Any member of the public may review the agency's work there and submit comments by email.

The CCRC began operation as a new, independent District agency two and a half years ago, on October 1, 2016. The agency is tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations that meet certain statutorily-specified goals.¹ These goals include: revising criminal statutes to use clear and plain language; to apply consistent definitions; to describe all offense elements that must be proven; to reduce unnecessary overlap and gaps between criminal offenses; to adjust penalties to be proportionate; and to enact Title 22 of the D.C. Code.

The agency's statutory mandate is focused on changes to the substantive criminal law of the District—the law regarding how crimes are defined and punished. Most of this mandate concerns uncontroversial matters of good governance, for example making sure criminal statutes are clear (e.g. using modern language) and complete (e.g., codifying defenses and all the elements of offenses). However, some aspects of the agency's mandate address more controversial criminal justice reform issues (e.g., the severity of sentences, the use of mandatory minimum sentencing, and the boundary between criminal and non-criminal behavior). Notably, many criminal justice reform matters, including criminal procedure issues (e.g., statutes of limitations, record sealing), and Executive branch actions (e.g., prosecutorial priorities and policing methods) are not within the agency's current purview.

Fiscal Year 2019 Budget and Activities

The agency's FY 2019 approved budget is \$723,873. Of that total, about 90%, approximately \$650,000, goes to personal services (PS) for the salary and benefits of the agency's 5 FTEs. About 10% of the budget, approximately \$74,000, goes to nonpersonal services (NPS) for everything from internet access to legal research database subscriptions to expert assistance with

¹ D.C. Code § 3-152(a) (“By September 30, 2019, 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.”).

social science research. The agency's statutory authorization currently is set to expire on October 1, 2019. The agency is located in a one-room office at the District's One Judiciary Square building, and it is one of the smallest in District government.

At the agency's February performance hearing I discussed the major activities that the agency accomplished in 2018, and the agency's Annual and Quarterly reports issued to the Council also address these matters. But, I'd like to briefly address the agency activities planned for the remainder of FY 19.

At present, the CCRC is working on a cumulative update to its earlier draft recommendations that will incorporate changes based on feedback from its Advisory Group and further staff review. Those updated recommendations will be released to the Advisory Group in about two weeks.

This summer, the CCRC plans to present to the Advisory Group draft recommendations regarding controlled substance and weapon possession offenses. A significant amount of work has already been done on weapon offenses. The CCRC has already incorporated higher gradations for use of weapons into its recommendations for particular violent offenses (e.g., assault). However, work remains to draft revisions to core controlled substance and weapon offenses (e.g., drug distribution and felon in possession of a firearm).

The other major set of recommendations that the agency plans to present to its Advisory Group in FY 19 concerns imprisonment penalties and fines for all offenses reviewed to-date. Significant work has already been done regarding penalty proportionality. The CCRC's draft general provisions set out eight standardized penalty classes for felonies and five classes for misdemeanors. The agency's draft recommendations for specific offenses also typically include more gradations, breaking offenses down into their more and less serious forms of conduct, which allows the law to more finely-tune appropriate punishments.

However, the agency's work this summer will go further and match the revised offenses' gradations to the new standardized penalty classes, thereby setting the authorized imprisonment and fines for all the revised offenses. To do this, the agency will create an ordinal ranking of revised offenses by seriousness and match groups of these offenses (of similar seriousness) to standardized penalty classes. The agency's draft ordinal ranking will be developed using information gathered from analysis of: 1) statutory maximum and minimum sentences under current District law; 2) sentences actually imposed by District judges in practice; 3) sentencing recommendations of the D.C. Sentencing Commission; and 4) surveys of public opinion about the relative seriousness of offenses.

Fiscal Year 2020 Budget and Activities

Looking forward to FY 20, the agency's workflow will depend on the extent to which the agency's authorization and funding is extended.

The Mayor's proposed budget would extend the agency's authorization, currently set to expire on October 1, 2020, and fund the agency at \$367,000, about half the level of its projected FY 20 costs. Critically, the Mayor's proposed funding would support only 2.5 FTEs for the agency, halving the agency's current staff.

While the Mayor's continued support is appreciated, as the CCRC is an independent agency I would respectfully request on its behalf that the Council provide full funding for the CCRC's expected costs in FY 20, increasing the Mayor's proposed funding level by \$367,000 to a total of approximately \$734,000.

Full funding for FY 20 will allow the agency to provide additional criminal code reform recommendations for a range of serious offenses (e.g. obstruction of justice, bribery, and public corruption) and a number of minor but common offenses (e.g. failure to appear in court, prostitution) that stand in need of revision. Details of the sequence in which the agency is targeting crimes for revision were provided in the agency's Work Plan and Schedule, provided to the Committee as Appendix C to the agency's 2019 performance oversight responses to this Committee. Critically, full funding in FY 20 will also allow the agency to develop recommendations for general defenses (e.g. self-defense) that, despite their importance to the criminal justice system, have never been legislatively codified in the District.

As important as expanding the *scope* of the agency's recommendations, full funding for FY 20 also will help improve the *quality and utility* of those recommendations. As mentioned earlier, in about two weeks the agency will be releasing to its Advisory Group a cumulative update of its draft recommendations that takes into account the Advisory Group's prior comments. With full funding, the agency would have sufficient time and staff resources to be able to: 1) incorporate the Advisory Group comments on the cumulative update; 2) add the new draft recommendations for penalties, defenses, weapon, drug, and other offenses developed by staff this spring, summer, and fall; 3) submit a penultimate set of draft recommendations to the Advisory Group this coming winter; and 4) in late winter or early spring (March – May) of 2020, hold an Advisory Group vote and submit to the Council and Mayor the agency's final recommendations for revision of most District criminal statutes that are currently prosecuted.

With full funding, in the later months of FY 20 the agency would be able to work on the details of a bill to enact a revised Title 22 that incorporates the agency's recommendations, continue development of supplemental recommendations on a variety of minor offenses, and be available to respond to Council and Mayor inquiries about the agency's recommendations. Full funding would provide time for Advisory Group review prior to its major vote in 2020, while also providing significant time for Council consideration of the agency's recommendations during the last quarter of Council Period 23.

In summary, should the CCRC be fully funded through FY 20 and work proceed on schedule, the CCRC would be able to issue recommendations to revise hundreds of criminal provisions, including crimes that accounted for over 96% of all adult convictions in recent years, as well as providing recommendations to codify the District's defenses and other general provisions for the first time. This would be a remarkable achievement, presenting the District with a path to adopt a clear, comprehensive, modern criminal code that both respects current statutes and case law, and makes progressive changes.

If the agency is not fully funded through FY 20, the scope, quality, and utility of the agency's work will be significantly reduced. For example, the agency may not be able to develop recommendations concerning obstruction of justice, bribery, and public corruption. Similarly, the agency likely would be unable to develop recommendations for codifying the District's general defenses. At half-funding, the agency in FY 20 would focus principally on finishing out and delivering recommendations for matters addressed in its three years of prior operation. Because the agency's budget almost entirely goes to staff salaries, any significant reduction in funding in FY 20 will mean laying off staff and losing their unique expertise with the subject-matter areas addressed in the agency's recommendations. Also, I should add that, as the agency will no longer receive no-cost support from the Lab in the Office of the City Administrator in FY 20, significant cuts to the agency's FY 20 NPS budget may mean the agency is unable to conduct additional statistical analysis or other social science research.

Closing

In closing, I also would like to thank this Committee, the Council, and the Mayor for their ongoing support of a careful, comprehensive review of the District's criminal statutes. Many of the District's criminal statutes are virtually unchanged since Congress first codified them in 1901 and, to grossly understate the matter, a lot of change has happened since 1901. The District deserves criminal laws that are clear, complete, consistent, proportionate, and reflect current District norms. Creating such reform recommendations is a difficult task but I speak for all the CCRC staff when I say it is a privilege to do this work.

I look forward to any questions you may have.