



Criminal Code Reform Commission  
FY 2019  
Third Quarter Report

SUBMITTED TO THE COUNCIL  
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION  
441 FOURTH STREET, NW, SUITE 1C001 SOUTH  
WASHINGTON, DC 20001  
PHONE: (202) 442-8715  
[www.ccrdc.dc.gov](http://www.ccrdc.dc.gov)

## PREFACE

The Criminal Code Reform Commission (CCRC) submits this quarterly report summarizing its recent activities, as required by statute.<sup>1</sup> This report concerns the third quarter of FY 2019, from April 1, 2019, through June 30, 2019. The CCRC's last quarterly report, on the second quarter of FY 2019, was submitted to the Council May 15, 2019.

## 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.<sup>2</sup> 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.<sup>3</sup> Approval by a majority of the Advisory Group is required for final recommendations to be submitted to the Council and the Mayor.<sup>4</sup> In preparing its reform recommendations the CCRC also reviews criminal code reforms in other jurisdictions, changes to criminal offenses

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<sup>1</sup> 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.").

<sup>2</sup> The CCRC's mandate in D.C. Code § 3-152(a) states:

[T]he 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.

<sup>3</sup> 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 for the District of Columbia (Designee of the Attorney General for the District of Columbia).

The current non-voting members of the Advisory Group are: Kevin Whitfield, Policy Advisor, 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).

<sup>4</sup> D.C. Code § 3-153(e).

recommended by the American Law Institute, and best practices recommended by criminal law experts.<sup>5</sup>

## NOTABLE CCRC ACTIVITIES APRIL– JUNE 2019

### *Development of Reform Recommendations*

The CCRC's work to develop recommendations for reform of District criminal statutes is guided by a Work Plan and Schedule that was first provided to the Council on February 9, 2017, as part of the agency's 2016 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 quarter of FY 2019 continued its work on Phase 2 (General Provisions for a new Title 22) and Phase 3 (Reformed Offenses for a new Title 22) 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.<sup>6</sup> Specifically, in the third quarter, CCRC staff delivered to its Advisory Group for comment one new draft report as part of Phase 2, with recommendations as follows:

- In its First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code*, submitted for Advisory Group review on April 15, 2019, the CCRC presented a cumulative update to section 214, sections 301-305, and section 701 of the draft Revised Criminal Code (RCC). These provisions concern matters such as merger of related offense provisions and inchoate liability (attempts, solicitation, conspiracy, and related provisions), and an assortment of standardized definitions used throughout the RCC. This cumulative update made numerous changes in response to prior Advisory Group written comments and made other changes recommended by the CCRC staff. Each prior Advisory Group comment and its handling was discussed in an appendix to the Report. The First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code* also contained new draft statutory language for two justification defenses: a Special Responsibility for Care, Discipline, or Safety Defense; and an Effective Consent

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<sup>5</sup> D.C. Code § 3-152(c)(2).

<sup>6</sup> 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 . . .”).

defense. These new provisions would codify, for the first time in the District, defenses to liability for the reasonable conduct of parents and others with responsibility for complainants, as well as situations where the complainant freely gave consent to minor harms.

In the third quarter the CCRC discussed with the Advisory Group various Phase 2 recommendations. At its April 3, 2019 and May 1, 2019 meetings, the Advisory Group discussed written comments received by the agency on the recommendations contained in the First Draft of Report #35, *Cumulative Update to Sections 201-213 of the Revised Criminal Code*. At its June 5, 2019 meeting, the Advisory Group discussed its written comments on RCC Chapters 3 and 7, presented in the First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code*.

As part of Phase 3, the CCRC continued its development of reform recommendations to the Council and Mayor that concern certain common and serious offenses. Specifically, in the third quarter, CCRC staff delivered to its Advisory Group for comment one new draft report as part of Phase 3, with recommendations as follows:

- In its First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code*, submitted for Advisory Group review on April 15, 2019, the CCRC presented a cumulative update to all chapters of the draft Revised Criminal Code (RCC) containing specific offenses. These provisions concern offenses such as murder, robbery, assault, theft, fraud, and disorderly conduct. This cumulative update made numerous changes in response to prior Advisory Group written comments and made other changes recommended by the CCRC staff. Each prior Advisory Group comment and its handling was discussed in an appendix to the Report. The First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code* also contained new draft statutory language for a few provisions, including civil provisions related to sexual assault and the offense of unlawful operation of a recording device in a motion picture theater.

In the third quarter the CCRC discussed with the Advisory Group draft recommendations concerning Phase 3 offenses contained in the First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code*. Discussions on these recommendations were held at the May 1, 2019 and June 5, 2019 meetings. The Advisory Group's written comments on the offenses and provisions contained in the Special Part of the Revised Criminal Code were not due until July 2019 (fourth quarter).

When finalized, the CCRC 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, enacted Title 22. The combined, final reform recommendations will be presented in the CCRC's final report to the Council and Mayor by the statutory deadline.<sup>7</sup>

### ***Agency Administration & Other Activities***

***Staffing.*** In May the CCRC welcomed two summer legal interns from George Washington School of Law and the University of California, Berkeley School of Law. Two of the agency's five staff also took extended leave for most of the third quarter.

***Data.*** In the third quarter agency staff worked with volunteer graduate students at the George Washington University Trachtenberg School of Public Policy and Public Administration to formulate and administer (through a vendor) a public opinion survey of District residents. The survey, modeled on prior surveys conducted of Pennsylvania and New Jersey, was designed to measure opinions about the relative seriousness of criminal offenses in order to help guide the agency's recommendations about penalty proportionality. The CCRC also worked with a vendor to perform analysis of D.C. Superior Court data to inform the CCRC's recommendations as to penalties for revised offenses.

***Council Testimony.*** The CCRC Executive Director provided written testimony to the Committee on the Judiciary and Public Safety as part of its June 24, 2019 Hearing on B23-134 "Community Harassment Prevention Amendment Act of 2019."

## **CONCLUSION**

The CCRC's code reform work in the third quarter of FY 2019 focused primarily on preparation, submission, and preliminary discussion of cumulative updates to its prior draft recommendations for new provisions and offenses. This update was designed to incorporate prior written comments of the agency's Advisory Group, as well as other changes recommended by staff based on further review. The CCRC also issued new draft recommendations that would for the first time codify some general justification defenses for the District. Staff issued 1 new draft report to the Advisory Group containing its new and updated recommendations, which concerned all aspects of the draft Revised Criminal Code, other than chapters 1, 2, and 6 in the general provisions. The Advisory Group met three times (monthly) during the third quarter to

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<sup>7</sup> Council budget legislation extends the CCRC's statutory funding and authorization one year, to September 30, 2020. In the fall of 2019 or early 2020, the agency will create a new Work Plan and Schedule to include development of a wider array of reform recommendations and to optimize efficiency.

discuss new and previously circulated draft recommendations.

All agency draft recommendations, as well as minutes for the agency's Advisory Group meetings are available on the CCRC website at [www.ccrcc.dc.gov](http://www.ccrcc.dc.gov). For additional details or questions about the CCRC's activities or operation, please contact the agency's Executive Director, Richard Schmechel.