



Criminal Code Reform Commission

FY 2020

Fourth Quarter Report

SUBMITTED TO THE COUNCIL

November 10, 2020

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 2020, July 1, 2020 through September 30, 2020. The CCRC's report on the third quarter of FY 2020 was submitted to the Council on August 14, 2020.²

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 currently 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.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 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

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

² See <https://lirms.dccouncil.us/Legislation/RC23-0207>.

³ 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.

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); Elana Suttenger, Special Counsel for 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).

⁵ D.C. Code § 3-153(e).

recommended by criminal law experts.⁶

NOTABLE CCRC ACTIVITIES JULY – SEPTEMBER 2020

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 and was most recently updated as part of the agency's 2019 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 third quarter of FY 2020 included work on Phase 2 (Creation of a General Part providing definitions, interpretive rules, culpability principles, and general defenses), Phase 3 (Revision of specific offenses' elements), and Phase 4 (Revisions of penalties to improve proportionality) of the Work Plan and Schedule.

The primary accomplishment for the third quarter was the submission to the Advisory Group, for its review and comment, of the following reports (containing draft statutory language and legal commentary) and memorandum (containing other background material):

1. First Draft of Report #63 – Misrepresentation as a District of Columbia Entity;
2. First Draft of Report #64 – Allowing Dogs To Go At Large;
3. First Draft of Report #65 – Contributing to the Delinquency of a Minor;
4. First Draft of Report #66 – Defense of Self, Others, or Property;
5. First Draft of Report #67 – Entrapment, Duress, and Mental Disease or Defect Defenses; and
6. Advisory Group Memo #38 – Statistics on District Adult Criminal Charges and Convictions.

These reports included new draft recommendations for changes to existing District statutes⁷ and new draft recommendations for codification of general defenses.⁸ Unlike most jurisdictions in the United States, the District has never codified general defenses (e.g. self-defense).

In the fourth quarter the agency also began its review of Advisory Group comments received at the end of the third quarter and on July 20 regarding the following reports (previously issued):

1. Third Draft of Report #41 - Ordinal Ranking of Maximum Imprisonment Penalties;

⁶ D.C. Code § 3-152(c)(2).

⁷ E.g., First Draft of Report #65 – Contributing to the Delinquency of a Minor.

⁸ E.g., First Draft of Report #66 – Defense of Self, Others, or Property.

2. Second Draft of Report #19 – Homicide Offenses;
3. Second Draft of Report #27 – Human Trafficking and Related Statutes;
4. Second Draft of Report #35 – Cumulative Update to Sections 201-213 of the RCC;
5. First Draft of Report #53 – Pinkerton Liability;
6. First Draft of Report #54 – Prostitution and Related Statutes;
7. First Draft of Report #55 – Failure to Appear and Violation of Conditions of Release Offenses;
8. First Draft of Report #56 – Panhandling;
9. First Draft of Report #57 – Second Look;
10. First Draft of Report #58 – Developmental Incapacity Defense;
11. First Draft of Report #59 – Endangerment with a Firearm;
12. First Draft of Report #60 – Execution of Public Duty, Lesser Harm, and Temporary Possession Defenses.
13. First Draft of Report #61 – Abuse of Government Power General Enhancement.
14. First Draft of Report #62 – Impersonation of a District Official.

These Advisory Group comments, totaling 48 pages, addressed a wide range of technical and substantive changes that various Advisory Group members suggested be made to the CCRC draft recommendations.

Written comments received from Advisory Group members, as well as agency statistical analysis (see below) of Superior Court data, were discussed at the members' monthly meetings. In the third quarter the CCRC held three meetings with its Advisory Group, on July 1, August 5, and September 2, 2020.

Lastly, CCRC staff continued work on a comprehensive update to the agency's draft recommendations that addresses feedback previously received from the Advisory Group. That update is planned for release in December 2020.

Administration & Other Activities

Staffing. In August an Attorney-Advisor on staff resigned from her position. The agency sought to backfill the position with a Social Scientist, which occurred in early October 2020.

Data. In February 2020 agency staff received, pursuant to a request, updated data from the D.C. Courts. The data included various charge and sentencing information for calendar year 2019. CCRC immediately began working with a vendor to perform analysis of the data to inform the CCRC's recommendations as to penalties for revised offenses. After addressing Court concerns with the preliminary analysis in June and July 2020, the CCRC was able to issue its updated analysis for years 2009-2019 on July 31, 2020 as Advisory Group Memo #38 – Statistics on District Adult Criminal Charges and Convictions. The statistical analysis was distributed to the agency's Advisory Group and discussed at the Group's September 2 meeting.

Covid-19 Effect on Operations. Since early March, a week prior to the Mayor’s order closing District government offices for non-essential functions, the CCRC staff has operated on indefinite telework due to the Covid-19 public health emergency. None of the agency’s employees are “essential employees” who have to report to the physical office, and all the agency’s work can be accomplished remotely. Nonetheless, the agency’s workflow has slowed markedly since the beginning of the emergency. Chiefly, this is due to the fact that a majority of staff have had to take intermittent or ongoing leave to care for their children while area schools and daycares have been closed due to Covid-19. These staffing challenges continue as the public health emergency continues.

CONCLUSION

The CCRC’s work in the fourth quarter of FY 2020 focused primarily on issuance of 5 new draft reports and a background memorandum on Superior Court statistics to the agency’s Advisory Group. The reports contained new recommendations for code reform including, principally, codification of several general defenses (e.g. self-defense) for the first time in the District. The agency also reviewed comments received back from the Advisory Group on earlier draft recommendations. The Advisory Group met three times with CCRC staff during the quarter to discuss these draft reports 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.ccrdc.gov. For additional details or questions about the CCRC’s activities or operation, please contact the agency’s Executive Director, Richard Schmechel.