



Criminal Code Reform Commission

FY 2020

Second Quarter Report

SUBMITTED TO THE COUNCIL

May 20, 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 second quarter of FY 2020, from January 1, 2020, through March 31, 2020. The CCRC's last quarterly report, on the first quarter of FY 2020, was submitted to the Council as part of the agency's Annual Report on February 6, 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 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

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 <https://lims.dccouncil.us/downloads/LIMS/44125/Introduction/RC23-0149-Introduction.pdf>.

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); 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).

⁵ D.C. Code § 3-153(e).

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 JANUARY– MARCH 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 second 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 accomplishments for the quarter were the release of twin reports: the First Draft of Report #50 - Cumulative Update to the RCC Other than Chapter 6 (2/19/20); and the First Draft of Report #52 - Cumulative Update to the RCC Chapter 6 (3/20/20). These two reports responded to Advisory Group comments over the past year, provided updates to all draft recommendations previously developed by the CCRC, and made several new (first) draft recommendations. The documents included over 180 pages of statutory text, the legal commentary over 1400 pages, over 450 pages specifying how Advisory Group comments were or were not addressed in the new draft recommendations, and additional background materials such as red-lined statutory language (compared to prior drafts).

The updates included both substantive and technical changes to prior draft recommendations, as well as prominent new additions such as a first proposal of absolute numbers for the statutory imprisonment authorized for the new penalty classes which every revised offense has been assigned. For example, the First Draft of Report #52 initially proposed elimination of mandatory minimum sentences consistent with expert recommendations, use of determinate sentences (numbers instead of "life" or "life without parole"), and setting the most severe imprisonment penalty for a Class 1 offense at 60 years. While the precise timeline for submission of a final, voting draft of CCRC recommendations to-date to the Advisory Group and an Advisory Group vote have not been set,⁷ the CCRC does not anticipate completing another

⁶ D.C. Code § 3-152(c)(2).

⁷ The agency is targeting July 2020 for release of a final, voting draft to the CCRC Advisory Group. A vote would then be held in September 2020. Issuance of these recommendations would not complete the agency's work—various criminal offenses would remain in need of reform—but the recommendations would include the offenses accounting for over 90% of convictions in recent years. The precise timing for release of a final, voting draft and a vote by the CCRC Advisory Group will depend on staff productivity during the Covid-19 emergency, the nature and extent of new

across-the-board update prior to release of a final, voting draft. Consequently, for most criminal statutes under revision, the First Draft of Report #50 and First Draft of Report #52 represent the penultimate version of the agency's recommendations to the Council and Mayor.

The CCRC issued two additional reports during the second quarter: the Second Draft of Report #41 - Ordinal Ranking of Maximum Imprisonment Penalties (2/19/20); and the First Draft of Report #51 - Jury Demandable Offenses (2/25/20). These reports proposed updated and new recommendations for how to classify the penalties for various offenses relative to one another and what the threshold should be for a defendant to be able to demand a jury. For example, the First Draft of Report #51 proposes that all offenses carrying a maximum imprisonment penalty over 90 days be jury-demandable, a substantial change from the current threshold of over 180 days still far from the majority of states which provide a jury of peers in all criminal proceedings carrying any imprisonment penalty.

In the second quarter the CCRC held three meetings with its Advisory Group, on January 8, February 5, and March 4. The meetings discussed prior draft recommendations on a variety of offenses and penalties. At the end of the second quarter staff began work on a last set of new first draft recommendations (for offenses including prostitution and panhandling) to be issued to the Advisory Group in May 2020.

Administration & Other Activities

Council Testimony. On February 13, Executive Director Richard Schmechel testified to the Committee on the Judiciary and Public Safety regarding the CCRC performance as part of the annual agency oversight process.

Staffing. In January, Attorney-Advisor Gabrielle Green joined the agency. Ms. Green most recently worked as a Capital Fellow with the San Diego Office of the Federal Defender. Ms. Green's hiring was possible due to the resignation in late 2019 of Mr. Nathaniel Wenstrup, who took a position with the Office of the Federal Defender for the Northern District of Virginia. The CCRC appreciated Mr. Wenstrup's service.

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. Analysis was not completed by the end of the second quarter.

Planning. In February 2020, as part of the agency's Annual Report, the agency issued an updated "Work Plan and Schedule (2-6-20)" to guide the agency's work sequence through FY 20

and beyond (should the agency's operation be extended past September 30, 2020).

Covid-19 Operations. Beginning in early March, a week prior to the Mayor's order closing District government offices for non-essential functions, the CCRC switched all staff to 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 slowed dramatically beginning in mid-March. Chiefly, this is due to the fact that a majority of staff have had to take leave to care for their children while area schools and daycares have been closed due to Covid-19. The agency completed planned spending for the month but has not initiated new contractor data projects, both to preserve fiscal resources and due to reduced staff capacity to oversee and prepare work.

CONCLUSION

The CCRC's work in the second quarter of FY 2020 focused primarily on preparation, submission, and preliminary discussion of an across-the-board update to all draft recommendations to date. Staff issued 4 new draft reports to the Advisory Group containing its new and updated recommendations. The Advisory Group met three times 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.ccrcc.dc.gov. For additional details or questions about the CCRC's activities or operation, please contact the agency's Executive Director, Richard Schmechel.