



Criminal Code Reform Commission  
FY 2017  
Second Quarter Report

SUBMITTED TO THE COUNCIL  
June 2, 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 activities as required by statute.<sup>1</sup> This report covers the second quarter of FY 2017, from January 1 through March 31. The CCRC's report on the first quarter of FY 2017 was submitted to the Council as part of the agency's 2016 Annual Report.<sup>2</sup>

## CCRC STATUTORY AUTHORITY

The CCRC began operation as a new, independent District agency on October 1, 2016, pursuant to language in 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 that revise the language of the District's criminal statutes within specified parameters, with a statutory deadline of October 1, 2018.<sup>3</sup> In preparing its 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>4</sup> Approval by a majority of the Advisory Group is required for the CCRC's final recommendations to be submitted to the Council and the Mayor.<sup>5</sup> In preparing its reform recommendations the CCRC also reviews criminal code reforms in other

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

<sup>2</sup> Available online at <http://lims.dccouncil.us/Download/37664/RC22-0031-Introduction.pdf>.

<sup>3</sup> 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).

<sup>4</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 (Designee of the Attorney General for the District of Columbia).

The current non-voting members of the Advisory Group are: Chanell Autrey, Legislative Counsel, Committee on the Judiciary (Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety); and Helder Gil, Legislative and Policy Advisory, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

<sup>5</sup> D.C. Code § 3-153(e).

jurisdictions, changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.<sup>6</sup>

## **NOTABLE CCRC ACTIVITIES JANUARY – MARCH 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 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 second quarter of FY ‘17 focused on completing Phase 1 and beginning Phase 2 of the Work Plan and Schedule.

As part of Phase 1, the CCRC developed reform recommendations for review by its Advisory Group regarding a number of the agency’s mandates.<sup>7</sup> The recommendations were mostly minor, often technical, changes to District criminal statutes that were uncontroversial. Appendices were developed that include: A) detailed information on affected statutes; B) Advisory Group comments; C) relevant crime statistics; and D) an appendix containing a draft bill that would enact the proposed changes into law.

On January 11, 2017, February 1, 2017, and March 1, 2017 the CCRC held meetings with its Advisory Group that included discussion of members’ written comments on the draft recommendations the agency had prepared as part of Phase I. Specific concerns regarding drafting conventions and word choices were discussed, and solutions developed. Additional drafts of the recommendations addressing these concerns were met with general approval. However, a final vote on the draft recommendations was not held in the second quarter.

As part of Phase 2, the CCRC began development of more substantive reform recommendations to the Council and Mayor addressing a different set of the agency’s mandates.<sup>8</sup> In its First Draft of Report No. 2, the CCRC drafted recommendations for a set of general provisions that are intended to comprise the heart of the chapter on the basic requirements of offense liability incorporated into the Revised Criminal Code. These include general provisions

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<sup>6</sup> D.C. Code § 3-152(c)(2).

<sup>7</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; (5) Eliminate archaic and unused offenses; (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 . . .”).

<sup>8</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; (10) Propose such other amendments as the Commission believes are necessary . . .”).

establishing a voluntariness requirement, a causation requirement, a culpable mental state requirement, a hierarchy of culpable mental states, and rules of interpretation applicable to the culpable mental state requirement.

At its January 11, 2017 meeting with the Advisory Group, there was significant discussion of the First Draft of Report No. 2. By the deadline of February 22, 2017, three members of the Advisory Group had submitted written comments on the CCRC's draft recommendations in the First Draft of Report No. 2. At the CCRC's March 1, 2017 meeting with the Advisory Group, various comments and differences of opinion concerning topics in the First Draft of Report No. 2 were discussed—matters such as how to define possession, the scope of the factual and legal causation doctrine, and the proposed definition of recklessness.

On March 13, 2017 the CCRC issued additional recommendations for general provisions as part of Phase 2. The First Draft of Report No. 3 and First Draft of Report No. 4 concerned issues of mistakes, deliberate ignorance, intoxication, and certain provisions regarding the proposed effective date and rules of construction for the draft recommendations.

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

#### *Agency Administration & Other Activities*

On January 31, 2017 the agency received a partial response to a request to the D.C. Sentencing Commission for data on District charging and sentencing. The CCRC staff, with help from the Lab in the Office of the City Administrator, subsequently analyzed the information that was made available.

On February 9, 2017 the agency submitted responses to agency performance questions from the Committee on the Judiciary and Public Safety. On February 9, 2017 the CCRC also submitted the agency's 2017 Annual Report to the Council Chairman and Chairman of the Committee on the Judiciary and Public Safety. The Annual Report summarized agency activities since its inception on October 1, 2016 and also served as the CCRC FY 2017 First Quarterly Report. Attached to the Annual Report was the Work Plan and Schedule for agency activities through FY 2018. On February 16, 2017 CCRC Executive Director Richard Schmechel testified before the Committee on the Judiciary and Public Safety at the agency's annual performance oversight hearing.

On February 17, 2017 the agency submitted testimony to the Committee on the Judiciary and Public Safety for the record of its public oversight roundtable on Sentencing in the District of Columbia: Agency Roles and Responsibilities held on February 9, 2017.

#### **CONCLUSION**

The CCRC's work in the second quarter of FY '17 focused on two main tasks: completion of Phase 1 and continued work on Phase 2 of the agency's Work Plan and Schedule. Phase 1 involved development of recommendations to eliminate unused and obsolete criminal offenses, amend statutes held to be unconstitutional, and support enactment of Title 22 of the D.C. Code, which are responsibilities described in the CCRC's statutory mandate. Phase 2 concerns drafting recommendations for new general provisions to govern revised criminal statutes. The new general provisions will provide consistent definitions about matters such as requisite mental states for criminal defendants, and improve the overall clarity of the District's criminal statutes per the CCRC's statutory mandate.

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