



FY 2017  
Third Quarter Report

SUBMITTED TO THE COUNCIL  
*August 29, 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 concerns the third quarter of FY 2017, from April 1 through June 30, 2017 and provides notice of a change in the agency's future work schedule. The CCRC's report on the first quarter of FY 2017 was submitted to the Council February 9, 2017, concurrent with the agency's 2016 Annual Report.<sup>2</sup> The CCRC's report on the second quarter of FY 2017 was submitted to the Council June 2, 2017.

## 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 to 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 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>4</sup> Approval by a majority of the Advisory Group

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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> 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 Advisor, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

is required for 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 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 APRIL – JUNE 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 first 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 third quarter of FY ‘17 focused on continuing its work on Phase 2 (General Provisions for a new Title 22A) and beginning Phase 3 (Reformed Offenses for a new Title 22A) 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>7</sup>

In its First Draft of Report No. 5, submitted for Advisory Group review on May 5, 2017, the CCRC drafted recommendations for a new classification scheme for offense penalties. Under the proposed classification, there would be eight standard classes of felonies and five standard classes of misdemeanors, with each class of offense carrying a particular imprisonment and/or fine penalty.<sup>8</sup>

In its First Draft of Report No. 6, submitted for Advisory Group review on June 7, 2017, the CCRC drafted recommendations for several penalty enhancements that could be applied to all reformed offenses. The recommendations would reform existing repeat offender, hate crime, and pretrial release penalty enhancements. The recommendations also detail limitations as to the applicable charging procedures and standard of proof for these penalty enhancements.

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<sup>5</sup> Criminal Code Reform Commission Establishment Act of 2016, Bill 21-669, Section 3123, Fiscal Year 2017 Budget Support Act of 2016 (June 21, 2016).

<sup>6</sup> *Id.*

<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; ...(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 . . .”).

<sup>8</sup> E.g., for a Class 6 felony, not more than ten (10) years imprisonment and a fine of not more than \$25,000.

In its First Draft of Report No. 7, also submitted for Advisory Group review on June 7, 2017, the CCRC drafted recommendations for a reformed definition of criminal attempts. The D.C. Code currently provides for attempt liability in a variety of ways, including a general attempt penalty provision that applies to a broad set of offenses.<sup>9</sup> In no place, however, does the D.C. Code define the term “attempt,” leaving determination of the scope of the term to judicial determination.

On April 5, May 17, and June 7, 2017, the CCRC held meetings with its Advisory Group that discussed both the above-listed draft recommendations (issued in the third quarter), and recommendations issued in the second quarter. The meetings included discussion of three Advisory Group members’ written comments on the First Drafts of Report No. 3 and Report No. 4, reports which contained recommendations for new, consistent culpable mental state definitions and statutory provisions addressing issues of mistake, deliberate ignorance, and intoxication. Specific concerns and solutions were discussed, and no major objection was raised as to the core features of the proposed recommendations in the First Drafts of Report No. 3 and Report No. 4.

In addition to the abovementioned work on draft general provisions for Phase 2, staff began to develop recommendations for revision of dozens of property offenses per Phase 3 of the Work Plan. Such offenses include theft, identity theft, arson, and destruction of property. Recommendations on these offenses were not issued to the Advisory Group during the third quarter, however.

The 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 Title 22A. The combined reform recommendations will be presented in the CCRC’s final report to the Council and Mayor by the statutory deadline of September 30, 2018.

#### *Agency Administration & Other Activities*

On April 19, 2017, the agency formally executed a Memorandum of Understanding (MOU) with the Office of the City Administrator (OCA) concerning provision of data analysis services by the OCA’s Lab @ DC to the CCRC. OCA agreed to provide these services at no cost to the CCRC, resulting in a substantial savings to the CCRC’s budget. This MOU, however, requires the CCRC to obtain relevant charging and sentencing data. While the CCRC sought an extensive data set from the DC Superior Court (see below), only limited data was available from public sources and the DC Sentencing Commission during the third quarter. Consequently, analysis pursuant to the MOU was quite limited in the third quarter.

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<sup>9</sup> D.C. Code § 22-1803 (“Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321), shall be punished . . .”).

On May 8, 2017 the agency submitted a request to the D.C. Superior Court for data on District charging, sentencing, and other relevant statistics. Subsequently, on June 9, 2017, the CCRC was notified that the D.C. Superior Court was preparing the requested data but that a formal Data Use Agreement (DUA) would need to be established concerning the data. A DUA was not completed by June 30 and no data was obtained in the third quarter.

On May 30, 2017 three legal interns joined the agency for the summer, providing *pro bono* legal research in aid of the CCRC’s mission for the following ten weeks. The CCRC greatly appreciates the contributions of Mr. Jarrell Blakemore (Howard University School of Law), Ms. Melanie Dellplain (Georgetown University Law Center), and Mr. Christopher Herr (Georgetown University Law Center).

On June 22, 2017, the agency submitted written testimony to the Committee on the Judiciary and Public Safety for the record of its June 22, 2017, Hearing on the Sexual Assault Victims’ Rights Amendment Act of 2017. The CCRC’s testimony related only to Section 5 of the bill, which would establish a new criminal offense entitled “Unlawful removal of another person’s clothing.” The CCRC made no recommendation regarding the advisability, drafting, or penalties of the proposed criminal offense, but did provide research on the relationship between the conduct criminalized by the proposed offense and related, existing criminal laws in the District and other jurisdictions.

#### **NOTICE OF CHANGE TO AGENCY WORK SCHEDULE**

The CCRC’s Schedule that was issued with its 2016 Annual Report projected that agency work on controlled substance offenses would occur in the fourth quarter of FY 2017, following issuance of draft property offenses and conspiracy. However, due to a number of factors,<sup>10</sup> the CCRC now believes it is advisable to change the proposed Schedule to sequence agency work on offenses against persons after conspiracy, and to postpone work on controlled substance offenses until 2018. This change will give priority to many of the District criminal statutes most in need of reform. Staff work on offenses against persons will begin in the fourth quarter of FY ’17 per this change.

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<sup>10</sup> The District’s offenses against persons—crimes like murder, assault, and kidnapping—are serious, frequently prosecuted, and yet contain some of the greatest deficits in terms of the clarity and completeness of the statutory definitions. Given the agency’s statutory deadline, prioritizing reform of offenses against persons before any other specific offenses is prudent. The recent issuance of a major *en banc* opinion by the D.C. Court of Appeals in *Carrell v. United States*, No. 12-CM-523, 2017 WL 3319149 (D.C. Aug. 3, 2017), regarding the mens rea required for liability under the District’s threats statute, will allow the agency to productively move forward with developing recommendations for offenses against persons. In addition, the CCRC’s initial work on reform of controlled substance offenses has identified several concerns that warrant consultation with other District agencies, moving the date for completion of recommendations for controlled substance offenses back to 2018.

## CONCLUSION

The CCRC's work in the third quarter of FY '17 focused on two main tasks. First, the agency continued work on Phase 2 of the agency's Work Plan and Schedule, concerning new draft general provisions that provide a common toolkit of definitions and rules concerning culpable mental states applicable to all reformed offenses. Recommendations were issued for the CCRC's Advisory Group to review concerning a new classification scheme for offense penalties, reform of certain penalty enhancements, and a new statutory definition of criminal attempts. Second, the agency began development of reform recommendations for Phase 3, concerning dozens of property offenses. No recommendations were issued to the CCRC's Advisory group concerning property offenses in the third quarter. Prospectively, the agency's Schedule guiding the sequence of work has been changed to expedite agency recommendations of offenses against person, beginning in the fourth quarter of FY '17.

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.