



Criminal Code Reform Commission
FY 2018
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.ccrc.dc.gov

PREFACE

The Criminal Code Reform Commission (CCRC) submits this quarterly report summarizing its recent activities, as required by statute.¹ This report concerns the third quarter of FY 2018, from April 1 through June 30, 2018. The CCRC's last quarterly report, on the second quarter of FY 2018, was submitted to the Council as part of the agency's 2017 Annual Report on May 9, 2018.²

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, with a statutory deadline of October 1, 2018.³ 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

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 Available online at <http://lms.dccouncil.us/Legislation/RC22-0177?FromSearchResults=true>.

³ 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).

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).

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 recommended by criminal law experts.⁶

NOTABLE CCRC ACTIVITIES APRIL – JUNE 2018

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 2016 Annual Report, and is currently being updated to account for the agency’s FY 2019 work.⁷ The current 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 2018 continued its work on Phase 2 (General Provisions for a new Title 22A) and 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.⁸ Specifically, in the third quarter, CCRC staff delivered to its Advisory Group for comment one new draft report as part of Phase 2, as follows:

- In its First Draft of Report #22, submitted for Advisory Group review on May 18, 2018, the CCRC drafted recommendations for a new statute addressing accomplice liability. Under the draft accomplice provision, a person may be found guilty as an accomplice when, acting with the culpable mental state required by the predicate offense, that person purposely encourages assists another person with the planning or commission of the conduct constituting that offense. This provision would, in part, replace the current penalty provision concerning persons “aiding or abetting”

⁵ D.C. Code § 3-153(e).

⁶ *Id.*

⁷ Council legislation approved during the third quarter will extend the CCRC’s statutory funding and authorization one year, to September 30, 2019. See B22-0754 - Fiscal Year 2019 Local Budget Act of 2018, and B22-0753 - Fiscal Year 2019 Budget Support Act of 2018. The agency is creating a new Work Plan and Schedule that accounts for the extension and maximizes development of additional reform recommendations.

⁸ 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...”).

in D.C. Code § 22-1805.⁹ However, the new statute goes further by providing a description of the elements, including the culpable mental states (now specified only in District case law), that must be proven to be guilty of aiding or abetting. The draft accomplice liability statute is generally consistent with District case law and prevailing case law nationally.

In the third quarter the CCRC discussed with the Advisory Group their written comments on previously circulated draft recommendations concerning Phase 2 general provisions, including: updates to culpable mental state definitions,¹⁰ penalties for attempting to commit crimes,¹¹ and solicitation and renunciation.¹² Discussion of written comments on updates to the culpable mental state definitions and penalties for attempts to commit crimes occurred at the April 4, 2018 Advisory Group Meeting. Discussion of written comments on Solicitation and Renunciation occurred at the June 6, 2018 Advisory Group Meeting.

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 concerning offenses against persons, as follows:

- In its First Draft of Report #21, Recommendations for Kidnapping and Related Offenses, submitted for Advisory Group review on May 18, 2018, the CCRC drafted recommendations for new kidnapping and criminal coercion offenses. These new statutes would replace the kidnapping statute in the current D.C. Code.¹³

In the third quarter the CCRC discussed with the Advisory Group their written comments on previously circulated draft recommendations concerning Phase 3 offenses against persons, including: Assault and Offensive Physical Contact,¹⁴ Robbery,¹⁵ and Abuse & Neglect of Children, Elderly, and Vulnerable Adults.¹⁶ Discussion of written comments on Assault and Robbery occurred at the April 4, 2018 Advisory Group Meeting. Discussion of written comments

⁹ D.C. Code § 22-1805 (“In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.”).

¹⁰ The CCRC issued its Third Draft of Report #2, Basic Requirements of Offense Liability, on December 21, 2017.

¹¹ The CCRC issued its First Draft of Report# 13, Penalties for Criminal Attempts, on December 21, 2017.

¹² The CCRC issued its First Draft of Report #18, Solicitation and Renunciation on March 16, 2018.

¹³ D.C. Code § 22-2001.

¹⁴ The CCRC issued its First Draft of Report #15, Assault and Offensive Physical Contact Offenses, on December 21, 2017.

¹⁵ The CCRC issued its First Draft of Report #16, Robbery, on December 21, 2017.

¹⁶ The CCRC issued its First Draft of Report #20, Abuse & Neglect of Children, Elderly, and Vulnerable Adults, on March 16, 2018.

on Homicide and Abuse & Neglect of Children, Elderly, and Vulnerable Adults occurred at the June 6, 2018 Advisory Group Meeting.

When finalized, 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, final reform recommendations will be presented in the CCRC's final report to the Council and Mayor by the statutory deadline.

Agency Administration & Other Activities

Data. In the third quarter the agency worked with the Lab in the Office of the City Administrator to clean and preliminarily analyze data received February 2, 2018 from the D.C. Superior Court ("Court") concerning certain charging and sentencing dispositions for the time period 2010-2016. This data set was a response to the agency's September 8, 2017 request. In June a draft spreadsheet presenting key aspects of this analysis was prepared and presented to Court staff for review prior to distribution to the agency's Advisory Group. In June the CCRC also requested an extension of its standing Data Use Agreement ("DUA") with the court through September 2019. However, a response to the draft spreadsheet and DUA extension request was not received by the end of the third quarter.

Staffing. In April 2018 staff attorney Patrice Sulton began employment with the CCRC, filling a vacancy created by a staff departure in January 2018. With Ms. Sulton's hiring, the agency has no vacancies. Training of Ms. Sulton on agency procedures and work to date began immediately. Within two weeks she was working under supervision of the Executive Director on drafting reform recommendations for several offenses. Nonetheless, the loss of the former staff's unique knowledge of some areas of District law are expected to cause residual delays going forward.

In May 2018, the agency welcomed three summer legal interns and provided them orientation on agency procedures. The interns performed legal research on a variety of topics under review by agency staff, and social science research on public opinions on the relative seriousness of various common offenses. The interns helped develop a possible survey of District residents' opinions on the relative seriousness of various types of offenses.

Community Outreach. In June 2018 the CCRC Executive Director met with representatives of a local advocacy organization to hear their concerns about the District's rioting statute. Staff also described their preliminary research into rioting statutes in other jurisdictions.

CONCLUSION

The CCRC's code reform work in the third quarter of FY 2018 focused primarily on preparation and issuance to its Advisory Group of first draft recommendations for new criminal statutes. These statutes include general provisions on accomplice liability and kidnapping. Staff also discussed with the agency's Advisory Group recent written comments submitted on draft reform recommendations, including: assault, homicide, and solicitation and renunciation of a criminal offense. In total, staff issued 2 new reports to the Advisory Group containing draft reform recommendations, and the Advisory Group met three times during the third quarter to discuss new and previously circulated draft recommendation.

In April the welcomed a new attorney-advisor, Ms. Patrice Sulton, into the agency's staff. The hiring of Ms. Sulton filled a vacancy created by a resignation in January 2018. Three law students also began summer internships with the agency. Using data on certain charging and sentencing dispositions for the time period 2010-2016, the agency also prepared and submitted to Superior Court staff for review a draft spreadsheet presenting key data.

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.