



D.C. CRIMINAL CODE REFORM COMMISSION
2023 PERFORMANCE OVERSIGHT HEARING
TESTIMONY OF EXECUTIVE DIRECTOR
JINWOO PARK

COMMITTEE ON THE JUDICARY & PUBLIC SAFETY HEARING
February 15, 2023

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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Good morning, Chairwoman Pinto. Thank you for holding this oversight hearing on the D.C. Criminal Code Reform Commission (“CCRC”). I am Jinwoo Park, the agency’s Executive Director. This has been a significant year of transition for the CCRC. Our prior Executive Director, Richard Schmechel, who had served in that role since the CCRC’s inception resigned this past year, and I was appointed as his successor. More importantly, last year the D.C. Council unanimously approved the Revised Criminal Code Act of 2022 (“RCCA”). Passage of this act was a historic moment for the District, the culmination of years of work, and a major turning point for the agency.

The Committee on the Judiciary and Public Safety (“JPS committee”) has been heavily involved in reviewing the CCRC’s work, and indeed our agency and the JPS committee have worked together closely to accomplish the agency’s largest achievement to date – passage of the RCCA. This was an enormous, years long undertaking, and our agency was very proud when this committee unanimously voted to approve the bill, and the Council as a whole also unanimously voted in favor of the bill at both first and second readings. I’ll describe how the CCRC supported the bill’s passage, as well as other efforts undertaken by the agency during the past year, and plans for the agency’s work in the coming year.

The CCRC fulfilled its original statutory mandate by submitting comprehensive recommendations for criminal code reform on March 31, 2021 to the Mayor and Council. These recommendations were the product of years of collaborative and iterative work by the CCRC and its Advisory Group¹, which thoroughly reviewed all recommendations. Multiple versions of all recommendations were drafted before the CCRC and the Advisory Group produced a final version, which the Advisory Group unanimously voted to approve for submission the Council and the Mayor. These final recommendations formed the basis for the RCCA.

The March 31, 2021 recommendations were drafted in accordance with general drafting styles and norms, but did not conform to all D.C. Council drafting conventions. The CCRC consulted with the office of the General Counsel for the D.C. Council, who provided extensive feedback to ensure that the RCCA was in full compliance with standard Council drafting norms. Throughout 2021 and 2022, the CCRC continued to assist the Council in making these non-substantive technical edits to the RCCA.

¹ The voting members of the Advisory Group were: 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 non-voting members of the Advisory Group were: 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 the Designee of the Deputy Mayor for Public Safety and Justice.

In addition the CCRC assisted the Council in preparing conforming amendments as part of the RCCA. The RCCA repealed and replaced nearly all of current Title 22, as well as several criminal offenses located outside of Title 22. There are numerous statutes throughout the D.C. Code that reference provisions that were repealed or replaced by the RCCA. In each instance, the original organic act had to be found and amended so that cross-references will remain accurate once the RCCA goes into effect. CCRC staff worked with the General Counsel's office to draft these conforming amendments. Title IV of the RCCA, which included these conforming amendments was, on its own, 66 pages long.

CCRC Senior Attorney Advisor Rachel Redfern remained on detail to the JPS committee and in that capacity helped draft the Committee Report on the RCCA. Ms. Redfern assisted in writing sections explaining substantive provisions in the bill and summaries of all witness testimony from the three hearings held by the JPS committee in 2021. Under the terms of the Memorandum of Understanding between the CCRC and the JPS committee, her detail ended at the end of calendar year 2022.

The CCRC published eight new reports in 2022 with recommendations for revisions to criminal offenses and provisions that were not included in the March 31, 2021 recommendations or in the original introduced version of the RCCA. These reports included recommendations pertaining to: terrorism offenses, obstruction of justice offenses, bigamy, resisting arrest, perjury and related offenses, gambling offenses, and repeal of antiquated, redundant, and unused offenses. The recommendations in these reports were incorporated into the final version of the RCCA.

Although the CCRC's Advisory Group formally completed its statutorily mandated duties after the March 31, 2021 recommendations were submitted, the CCRC sent drafts of these reports to the former Advisory Group members, who provided helpful feedback in preparing the recommendations included in the final reports. As with other revised offenses in the RCCA, the recommendations in these reports went through multiple drafts, with the final versions incorporating the feedback and insights of the former Advisory Group members. The CCRC is grateful that the former members were willing to provide continued guidance, even though the Advisory Group technically no longer exists.

The CCRC also assisted the Council in making substantive changes to the RCCA. Councilmembers in consultation with the executive, with the Metropolitan Police Department, victims' rights advocates, and members of the community, made several changes to the RCCA. This included adding "quality of life" offenses such as Public Urination and Defecation and Possession of an Open Container of Alcohol, and expanding the scope of other offenses, such as Public Nuisance's criminalization of making loud noises at night. The Council also increased the maximum penalties for offenses such as burglary, carjacking, and robbery, and maintained a mandatory minimum sentence for first degree murder. As Councilmembers considered these and other possible substantive changes, the CCRC provided advice as to how these changes may affect or interact with other provisions in the RCCA, or if substantive changes were unnecessary and already addressed by other provisions in the RCCA.

CCRC staff has spent a significant amount of time updating commentaries that will accompany the RCCA. When the CCRC first submitted its March 31, 2021 recommendations, it also submitted hundreds of pages of commentary that accompany the statutes included in the recommendations. These commentaries were intended as an aide in interpreting and understanding the statutory provisions that would go on to become the RCCA. However, as I described earlier, the final RCCA differs significantly from the initial recommendations, and therefore the commentaries must also be thoroughly updated. The RCCA directs² the CCRC to transmit updated commentaries to the Secretary of the Council for publication in the D.C. Register, on or before the bill's effective date, which is currently projected to be sometime in mid-May, 2023. CCRC staff must draft entirely new commentaries based on substantive changes made by the Council, and make thousands of edits to account for the non-substantive technical changes in the bill. We have made significant progress, and expect to complete the task on or before the bill's projected effective date.

In addition to the work I've described related to the RCCA, the CCRC also provided testimony at the February 28, 2022 hearing held by the JPS committee on B24-0516, the "Female Genital Mutilation Prohibition Act of 2021," and B24-0560, the "Animal Care and Control Omnibus Amendment Act of 2021."

The CCRC did not produce a report of charging and sentencing trends from 2020 and 2021 as expected, due to delays in receiving data from D.C. Superior Court. Under the Data Use Agreement between the CCRC and D.C. Superior Court, the Court has provided an enormous data set to the CCRC, with comprehensive charging and sentencing data for adult cases for the years 2010-2019. In the summer of 2022, the CCRC requested updated data for years 2020 and 2021, and the Court had indicated that it would send us the data by the late summer or early fall of 2022. To date, we still have not received any updated data. The delays may be due to the Court overhauling its own data collection system, but they have stated they still plan to send us the data. When we receive the updated data, we plan to publish a report analyzing charging and sentencing trends from 2020 and 2021.

The CCRC has begun researching and drafting recommendations for revisions to offenses not included in the RCCA. This includes offenses related to animal cruelty, and public corruption offenses such as bribery. We will continue working to prepare draft recommendations, and expect to circulate those drafts to former Advisory Group members for comment later this year. Of course, the CCRC will also be available to advise the Council on any newly introduced pieces of criminal legislation.

Finally, in discussing the agency's recent work, and our plans for the coming year, I unfortunately must address the ongoing attempt by Congress to interfere with the District's local policy making authority. As I'm sure everyone is aware, there are currently two disapproval resolutions making

² § 22A-105.

their way through Congress, which would overturn the RCCA, and an unrelated bill that deals with voting rights in local elections. This of course has enormous implications for our city and the CCRC. Our agency has had to dedicate a significant amount of time in response to the disapproval resolutions. We have provided briefings to Congressional staff, answered specific questions about the RCCA, and have even researched law in other jurisdictions to help demonstrate that the RCCA is consistent with national criminal code drafting norms.

I had expected that a significant portion of the agency's work this year, and in coming years, would involve assisting other agencies and stakeholders in implementation of the RCCA. These activities would include collaborating with the D.C. Sentencing Commission to provide advice on how the sentencing guidelines can be best updated in accordance with the RCCA. The CCRC would also work with the Redbook Committee, the group responsible for drafting and updating model jury instructions, to assist that committee in drafting new instructions consistent with the RCCA. I have already scheduled meetings with both the D.C. Sentencing Commission and the Redbook Committee to begin what will be a lengthy process of updating both the sentencing guidelines and model jury instructions. In addition, I expected that the CCRC would produce training materials, and help prepare training sessions for attorneys, judges, the Metropolitan Police Department, and other agencies and stakeholders in the criminal justice system.

When and whether the CCRC takes on these tasks will depend on action by the federal government. Unfortunately, as of today it is unclear whether Congress will respect District residents' right to self-governance. But despite this uncertainty, the CCRC will continue its work in support of RCCA implementation and will continue to issue recommendations for revisions to criminal offenses.

Although the outcome is still unclear, the mere prospect of the disapproval resolution's passage is deeply disappointing. As you know, the District's current code is one of the very worst in the entire nation. It fails to perform the fundamental task of clearly defining the law, which creates uncertainty for defendants, judges, attorneys, and law enforcement, and results in needless administrative costs as Courts grapple with ambiguities that could be resolved by a single line of text. The RCCA was the product of years and years of work and collaboration, and although many have reasonable disagreements with specific provisions in the bill, all sides agree that a comprehensive modernization of our criminal code is both badly needed and long overdue. I hope that ultimately, the District will have a clear, high quality code that lives up to the standards that our city deserves, written not by members of Congress, but by local District officials.

To conclude, I want to thank you, Chairwoman Pinto for holding this hearing and for your support of the RCCA. I look forward to working with you and your staff in the coming years to make our criminal justice system more effective, more transparent, and more just, while ensuring the safety of all District residents.

I look forward to addressing the questions you have.