



DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION

2021 ANNUAL REPORT

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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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INTRODUCTION

The D.C. Criminal Code Reform Commission (CCRC) is pleased to present its Annual Report for calendar year 2021, in compliance with its statutory mandate.¹

The CCRC began operation as an 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. Through March 31, 2021, the CCRC’s statute tasked it with submitting to the Mayor and the Council comprehensive criminal code reform recommendations that would revise the District’s criminal statutes within specified parameters and that were approved by a statutorily-designated Advisory Group. With completion of the CCRC’s work to develop and submit its recommendations by March 31, 2021, the agency’s statutory mandate has changed. The CCRC’s statutorily-specified duties under D.C. Code § 3-152(d) now require that: “The Commission shall provide, upon request by the Council or on its own initiative, a legal or policy analysis of proposed legislation or best practices concerning criminal offenses, procedures, or reforms, including information on existing District law, the laws of other jurisdictions, and model legislation.”

SUMMARY OF CCRC ACTIVITIES IN 2021 AND 2022 (TO-DATE)

In 2021, after four and a half years of dedication and focus by all of the CCRC’s staff and the agency’s statutorily-designated Advisory Group members,² the agency issued its comprehensive recommendations for criminal code reform on March 31, 2021.

The CCRC recommendations were developed through an exhaustive study of current criminal law and court data in the District, as well as an examination of models and best practices in other jurisdictions. To ensure the revised penalties reflect current District values, the agency also engaged a leading public opinion polling agency to gauge how District voters, a demographically-representative sample of 400, viewed the seriousness of various

¹ The CCRC’s statutory mandate for an annual report under D.C. Code § 3-154(c) states: “Before March 31, 2022, and annually thereafter, the Commission shall file an annual report with the Council of its activities during the previous calendar year.”

² The Advisory Group completed its work on March 31st, 2021. At that time 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 Helder Gil, Chief of Staff, Office of the of the Deputy Mayor for Public Safety and Justice (Designee of the Deputy Mayor for Public Safety and Justice). The CCRC remains deeply grateful for the contributions of these Advisory Group members.

crimes. Multiple drafts were issued of all recommendations. The CCRC's Advisory Group members reviewed each proposal and provided detailed feedback, with monthly discussion meetings that were open to the public, and over 700 pages of written comments. Agency staff reviewed and documented in writing how every Advisory Group comment was handled. In late March 2021, after years of work, all five voting members of the Advisory Group—including designees of the Office of the United States Attorney for the District of Columbia, the Attorney General for the District of Columbia, and the D.C. Public Defender Service, and law professors Don Braman and Paul Butler—voted unanimously to approve the CCRC's submission of its recommendations (and supporting materials) to the Council and Mayor.

The March 31st recommendations cover most crimes currently prosecuted in the District, over 97%, and provide new language and penalties to improve the statutes' clarity, consistency, completeness, and proportionality. The approved recommendations consisted of hundreds of pages of new statutory language and an accompanying reference document—a commentary over 2000 pages in length—explaining the meaning of the new language and how it changes current District law. It was a tremendous, multi-year achievement.

Since the submission of the March 31st recommendations, the agency's activities in 2021 split into two main tracks.

First and foremost, the agency worked to turn the recommendations into legislation and address questions about them from the Council, public, and criminal justice-related organizations.

To that end, Executive Director Schmechel and the D.C. Justice Policy Institute, under contract with the CCRC, reached out to discuss the reform recommendations with an array of criminal justice stakeholders. On June 16-17, 2021, the agency hosted a public, two-day, online symposium about the origins of and influences on the DC Criminal Code as it stands today, the CCRC reform recommendations, and how the CCRC reform recommendations might affect the current system. The symposium featured Yale Law School Professor James Forman Jr., Pulitzer prize-winning author, members of the CCRC Advisory Group, and other experts and leaders on D.C. criminal law and criminal law reforms.

Meanwhile, since the spring of 2021, two of the agency's five staff worked with the Council's Committee on the Judiciary and Public Safety (JPS) and the Council's Office of General Council on the preparation of legislation to advance the March 31st recommendations. That work involved an array of technical, non-substantive changes and detailed retracing and citation of original laws dating back to the 1800s, steps necessary for a complete bill. By the end of the summer a bill was completed and, on October 1, 2021, the CCRC submitted to the Council the Revised Criminal Code Act of 2021 (RCCA).

The JPS Committee held three extensive, day-long hearings on the RCCA in the last months of 2021. In the lead-up to the hearings there was outreach to and discussions with

organizations and members of the public who were interested in the bill and had questions. The Advisory Group members and dozens and dozens of experts, government and nonprofit organizations, and public individuals appeared at the hearings and gave testimony about the bill. Executive Director Schmechel testified at length during the first and third hearings about the changes in law in the RCCA and the process used to develop the recommendations.

The public hearings demonstrated strong and diverse support for the RCCA. Those few aspects of the bill that were questioned by some were also supported by others. Reasonable differences of opinions exist on any major criminal justice reform, but the vast majority of the bill received consensus support. That consensus is a testament to the District's need for comprehensive modernization—the criminal code hasn't undergone a comprehensive update since 1901—as well as the careful process used to assemble the bill.

Since the hearings on the RCCA in late 2021, two of the agency's five staff have continued on detail with the JPS Committee to provide technical assistance on the bill as amendments are considered and the Committee report is prepared in 2022.

The second main track that CCRC activities followed since submission of the March 31st recommendations was work on new criminal law reform recommendations.

This work on new reform recommendations involved monitoring new Council legislation and responding to any Council requests for analysis, as well as drafting new language to replace those few statutes in D.C. Code Title 22 that weren't already addressed in the March 31st recommendations or the RCCA.

In late 2021, the CCRC provided testimony on the "Redefinition of Child Amendment Act of 2021" at the October 7th hearing on that bill. More recently, on February 28, 2021 the agency also provided testimony at the JPS hearings on the "Female Genital Mutilation Prohibition Act of 2021" and the "Animal Care and Control Omnibus Amendment Act of 2021."

In addition, since March 31st, 2021, the CCRC has drafted and posted for public comment new recommendations for reform of the District's crimes of obstruction of justice, terrorism, perjury, bigamy, and a few other statutes. These statutes were not addressed in the March 31st recommendations, but the new recommendations are compatible with the RCCA (and may be joined with that bill if the Council sees fit to do so). While the CCRC's Advisory Group no longer exists as a formal entity, the CCRC has specifically reached out to its members for feedback on these latest draft reform recommendations.

Lastly, since March 31st, the CCRC has continued its work to analyze D.C. Superior Court charging and sentencing data. A significant report was issued this past year on Life, Life-Equivalent, and Long-Term Sentences in the District from 2010-2019, and the agency

continues to seek data that will help the CCRC and the Council better understand current court practice as that is a major consideration in estimating the practical effect any changes to the law may bring.

EXPECTED CCRC ACTIVITIES IN THE REMAINDER OF 2022

In the near future, the agency plans to continue these abovementioned two tracks of activity through at least the fiscal year (September 30th), and perhaps through calendar year 2022. Additional criminal statutes that the agency plans to develop reform recommendations for include bribery and public corruption, gambling, animal cruelty, and a few other offenses.

Farther off, in early FY23 or calendar year 2023, the agency anticipates a shift in activities. If, as hoped, the RCCA passes into law, the agency will be involved in supporting its implementation, which may include, for example, collaboration with the D.C. Sentencing Commission, the public-private group responsible for updating the District's jury instructions, and perhaps other trainings of criminal law practitioners. It is also expected that the agency will focus on reform recommendations for remaining crimes in other D.C. Code titles (e.g., traffic offenses in Title 50) or sentencing and criminal procedure matters in Titles 23 and 24. This summer some initial investigation of these code sections will be conducted, to aid agency planning. Of course, the CCRC also will continue to monitor and provide analysis of criminal bills.

APPENDICES

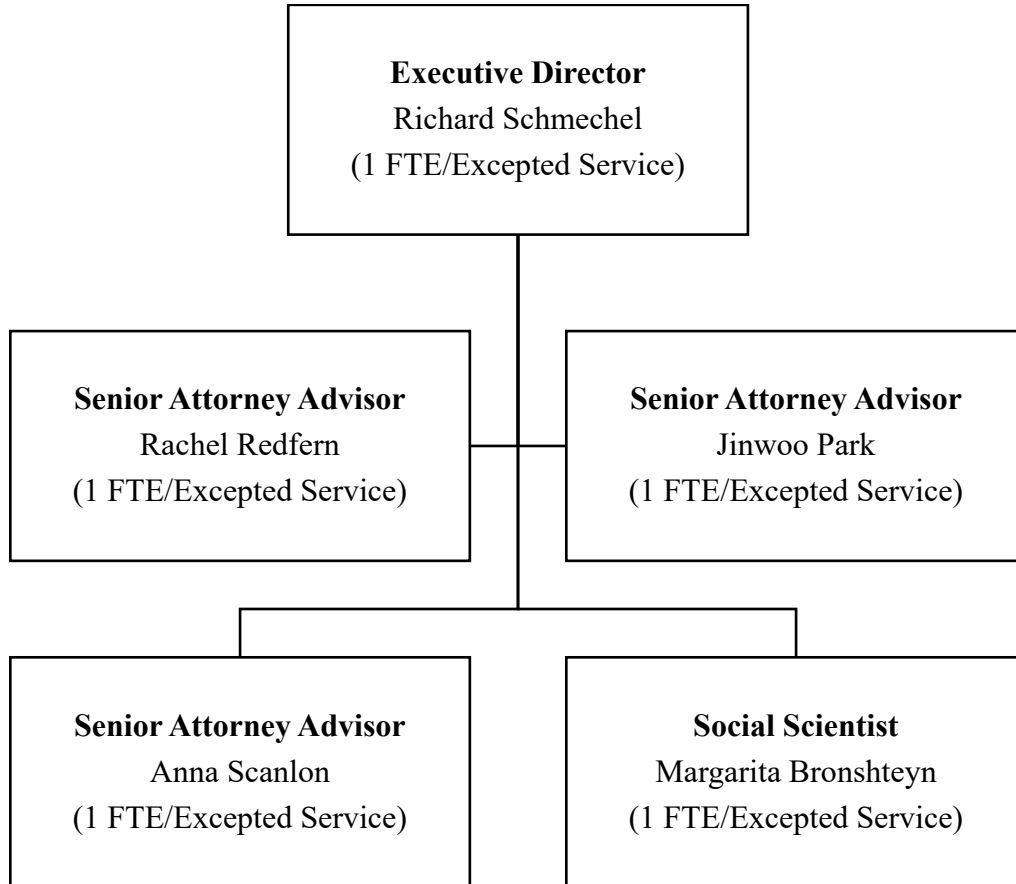
Appendix A – CCRC Organizational Chart

Appendix B – Recent CCRC Reports, Memos, & Analyses

Appendix C – Recent CCRC Testimony

Appendix A – CCRC Organizational Chart

As of 3/1/22 the agency has 0 vacant, 0 frozen, and 5 filled positions.



Appendix B – Recent CCRC Reports, Memos, & Analyses

The CCRC publicly released the following reports, memos or analyses during calendar year 2021 and 2022 to-date. These materials are available on the CCRC website at <https://ccrc.dc.gov/page/ccrc-documents>.

Agency Administrative Reports

- CCRC 2020 Annual Report and FY 2021 First Quarter Report of Activities (issued 3/26/21).

Reports With Code Reform Recommendations and Memos with Background Information

Report (Draft #)	Issued	Comments Due	Title
69 (1 st)	1/15/2021	2/15/2021	Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses
70 (1 st)	3/10/2021	3/24/2021 (final meeting)	Criminal Code Reform Commission (CCRC) Recommendations for the Council and Mayor (Voting Draft) and Supporting Materials
71 (1 st)	10/5/2021	11/16/2021	Terrorism Offenses
72 (1 st)	10/5/2021	11/16/2021	Obstruction of Justice Offenses
73 (1 st)	10/5/2021	11/16/2021	Bigamy
74 (1 st)	10/5/2021	11/16/2021	Repeal of Throwing Stones or Other Missiles, Kindling Bonfires, and Redundant Pollution Statutes
71 (2 nd)	2/1/2022	3/1/2022	Terrorism Offenses
72 (2 nd)	2/1/2022	3/1/2022	Obstruction of Justice Offenses
73 (2 nd)	2/1/2022	3/1/2022	Bigamy
75 (1 st)	2/1/2022	3/1/2022	Resisting Arrest
76 (1 st)	2/1/2022	3/1/2022	Perjury and Other Falsification Offenses
77 (1 st)	2/9/2022	3/4/2022	Repeal of Misc. Crimes and Statutes – Property Stolen in Another Jurisdiction, 1893 Act Prosecutions, Terrorism Jurisdiction, and Case Referral

Memo	Issued	Title
41	1/15/2021	Supplemental Materials to the First Draft of Report #69
42	3/10/2021	Supplemental Materials to the First Draft of Report #70

Other Reports, Memos, and Analyses

- Analysis of Life, Life-Equivalent, and Long-Term Sentences in the District of Columbia 2010-2019.

Appendix C – Recent CCRC Testimony

The CCRC provided the following testimony during calendar year 2021 and 2022 to-date. Copies of the testimony are available on the CCRC website at <https://ccrc.dc.gov/page/ccrc-documents>.

Testimony

- Oral and Written Testimony for the February 28, 2022 Hearing on B24-0516, the “Female Genital Mutilation Prohibition Act of 2021” and B24-0560, the “Animal Care and Control Omnibus Amendment Act of 2021”.
- Oral and Written Testimony for the February 18, 2022 CCRC Performance Oversight Hearing.
- Oral and Written Testimony for the December 16, 2021 Hearing on B24-0416 the “Revised Criminal Code Act of 2021” (RCCA).
- Oral and Written Testimony for the November 4, 2021 Hearing on B24-0416, the “Revised Criminal Code Act of 2021” (RCCA).
- Oral and Written Testimony for the October 7, 2021 Hearing on B24-0338, the “Redefinition of Child Amendment Act of 2021.”
- Oral and Written Testimony for the February 5, 2021 CCRC Performance Oversight Hearing.