



D.C. Criminal Code Reform Commission
2022 Performance Oversight Hearing
Testimony Of Executive Director
Richard Schmechel

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY HEARING
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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Good afternoon Chairman Allen. Thank you for holding this oversight hearing on the D.C. Criminal Code Reform Commission (the “CCRC”). I am Richard Schmechel, the agency’s Executive Director.

This Committee already has been deeply involved in reviewing the CCRC’s work this past year. I cannot hope to summarize the content of the agency’s crowning achievement this past year—the submission to the Council of comprehensive criminal code reform legislation, the Revised Criminal Code Act of 2021 (RCCA)—or the hearings this Committee has held on the bill. The best I can do is recount today the broad strokes of the agency’s work in 2021 and sketch where the agency’s resources are focusing now.

The CCRC began operation as a new, independent District agency just over five years ago, on October 1, 2016. The agency was originally tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations to meet certain statutorily-specified goals.¹ Those goals included revising criminal statutes to use clear and plain language, to apply consistent definitions, to describe all offense elements that must be proven, to reduce unnecessary overlap and gaps between criminal offenses, to adjust penalties to be proportionate, and to enact Title 22 of the D.C. Code. The deadline for completion of those recommendations was March 31, 2021.

I am proud to say that through the dedication and focus of all the CCRC’s staff and the agency’s statutorily-designated Advisory Group members,² we met that March 31, 2021 deadline.

The CCRC recommendations were developed through an exhaustive study of current criminal law and court data in the District, as well as 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 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

¹ D.C. Code § 3–152.

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.

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

To that end, I 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, we 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 this past spring, two of the agency’s five staff worked with this Committee 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).

As you know, this 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. I myself 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 two of the agency's five staff have continued on detail with this Committee to provide technical assistance on the bill as amendments are considered and the Committee report is prepared in 2022.

As I mentioned earlier, since the submission of the March 31st recommendations, the agency's activities have split into two main tracks, the first being further work to turn the recommendations into legislation and provide technical support to consideration of the legislation. The second main track has been to work on new criminal law reform recommendations.

This work on new reform recommendations involves 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 RCCA.

Recently the CCRC provided testimony on the "Redefinition of Child Amendment Act of 2021" at the October 7, 2021 hearing on that bill. The agency will also provide analysis at the Committee hearing later this month 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 the bill if the Committee 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 we continue to seek data that will help the CCRC and the Council more broadly understand current court practice as that is a major consideration in estimating the practical effect any changes to the law may bring.

That is where we are today. The CCRC is comprised of just 5 people, and these activities (in addition to normal administrative responsibilities) have kept us extremely busy.

In the near future, the agency plans to continue these 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, I anticipate a shift in activities. I expect that the RCCA will pass into law and 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. I also expect 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 our planning. Of course, the agency also will continue to monitor and provide analysis of criminal bills.

In closing, I want to thank you, Chairman Allen, and your tremendous staff. To be willing to challenge the status quo and the structural flaws in our legal system requires political leadership to take on tough decisions. I appreciate the strong support you have shown for the CCRC as a new, independent agency dedicated to researching policy solutions, and for the consideration you have given to the RCCA bill. I and my staff appreciate the opportunity to contribute to this vital work.

I look forward to addressing the questions you may have.