



Criminal Code Reform Commission

FY 2020

Third Quarter Report

SUBMITTED TO THE COUNCIL

August 14, 2020

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION

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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 2020, from April 1, 2020, through June 30, 2020. The CCRC's last quarterly report, on the second quarter of FY 2020, was submitted to the Council on May 20, 2020.²

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 currently 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.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 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,

¹ 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.").

² <https://lims.dccouncil.us/Legislation/RC23-0179>.

³ The CCRC's mandate in D.C. Code § 3-152(a) states:

[T]he 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.

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).

⁵ D.C. Code § 3-153(e).

changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.⁶

NOTABLE CCRC ACTIVITIES APRIL– JUNE 2020

Development of Reform Recommendations

The CCRC's work to develop recommendations for reform of District criminal statutes is guided by a 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 was most recently updated as part of the agency's 2019 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 2020 included work on Phase 2 (Creation of a General Part providing definitions, interpretive rules, culpability principles, and general defenses), Phase 3 (Revision of specific offenses' elements), and Phase 4 (Revisions of penalties to improve proportionality) of the Work Plan and Schedule.

The primary accomplishment for the third quarter was submission to the Advisory Group, for its review and comment, the following reports (containing draft statutory language and legal commentary) and memoranda (containing other background material):

1. Third Draft of Report #41 - Ordinal Ranking of Maximum Imprisonment Penalties;
2. Second Draft of Report #19 - Homicide Offenses;
3. Second Draft of Report #27 – Human Trafficking and Related Statutes;
4. Second Draft of Report #35 – Cumulative Update to Sections 201-213 of the RCC;
5. Advisory Group Memo #33 - Supplemental Materials to the First Draft of Report #53 and the Second Draft of Report # 19;
6. Advisory Group Memo #34 - Supplemental Materials to the Second Draft of Report #27;
7. Advisory Group Memo #35 - Supplemental Materials to the Second Draft of Report #35;
8. First Draft of Report #53 – Pinkerton Liability;
9. First Draft of Report #54 – Prostitution and Related Statutes;
10. Advisory Group Memo #36 – Supplemental Materials to the First Draft of Report #54;
11. First Draft of Report #55 – Failure to Appear and Violation of Conditions of Release Offenses;
12. First Draft of Report #56 – Panhandling;
13. First Draft of Report #57 – Second Look;
14. First Draft of Report #58 – Developmental Incapacity Defense;

⁶ D.C. Code § 3-152(c)(2).

15. Advisory Group Memo #37 – Supplemental Materials to the First Draft of Report #58;
16. First Draft of Report #59 – Endangerment with a Firearm;
17. First Draft of Report #60 – Execution of Public Duty, Lesser Harm, and Temporary Possession Defenses.
18. First Draft of Report #61 – Abuse of Government Power General Enhancement.
19. First Draft of Report #62 – Impersonation of a District Official.

These reports included revisions to previous CCRC draft recommendations,⁷ new draft recommendations for changes to existing District statutes,⁸ new draft recommendations for entirely new criminal statutes,⁹ and new draft recommendations for codification of general defenses.¹⁰

In the third quarter the agency also began its review of Advisory Group comments received during the quarter on the following reports (issued in the second quarter of FY20):

1. First Draft of Report #50 - Cumulative Update to the Revised Criminal Code Other than Chapter 6
2. Second Draft of Report #41 - Ordinal Ranking of Maximum Imprisonment Penalties.
3. First Draft of Report #51 – Jury Demandable Offenses (2-25-20); and
4. First Draft of Report #52 - Cumulative Update to the Revised Criminal Code Chapter 6.

These Advisory Group comments, totaling 90 pages, addressed a wide range of technical and substantive changes that various Advisory Group members suggested be made to the CCRC draft recommendations.

In the third quarter the CCRC held two meetings with its Advisory Group, on May 6 and June 3. The previously scheduled meeting for April 1, 2020 was cancelled due to the public health emergency and the lack of urgent issues by Advisory Group members or agency staff. At the May and June meetings Advisory Group members' prior written comments and new reports were discussed.

Administration & Other Activities

Staffing. In June, the CCRC welcomed three summer legal interns from area law schools who performed research for the agency: Varun Bhadha, Jordan Chemtob, and Jocelyn Westray.

Data. In February 2020 agency staff received, pursuant to a request, updated data from the D.C. Courts. The data included various charge and sentencing information for calendar year

⁷ E.g., Second Draft of Report #19 - Homicide Offenses.

⁸ E.g., First Draft of Report #54 – Prostitution and Related Statutes.

⁹ E.g., First Draft of Report #59 – Endangerment with a Firearm.

¹⁰ E.g., First Draft of Report #60 – Execution of Public Duty, Lesser Harm, and Temporary Possession Defenses.

2019. CCRC immediately began working with a vendor to perform analysis of the data to inform the CCRC's recommendations as to penalties for revised offenses. Analysis was not completed by the end of the third quarter.

Covid-19 Operations. Since early March, a week prior to the Mayor's order closing District government offices for non-essential functions, the CCRC staff has operated on indefinite telework due to the Covid-19 public health emergency. None of the agency's employees are "essential employees" who have to report to the physical office, and all the agency's work can be accomplished remotely. Nonetheless, the agency's workflow has slowed markedly since the beginning of the emergency. Chiefly, this is due to the fact that a majority of staff have had to take intermittent or ongoing leave to care for their children while area schools and daycares have been closed due to Covid-19.

CONCLUSION

The CCRC's work in the third quarter of FY 2020 focused primarily on issuance of 19 new draft reports and background memoranda to the Advisory Group containing its new and updated recommendations. The agency also reviewed comments received back from the Advisory Group on an earlier (second quarter of FY20) across-the-board update to all draft recommendations to date. The Advisory Group met twice with CCRC staff during the quarter to discuss these draft reports and previously circulated draft recommendations.

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. For additional details or questions about the CCRC's activities or operation, please contact the agency's Executive Director, Richard Schmechel.