



D.C. CRIMINAL CODE REFORM COMMISSION
FISCAL YEAR 2024 BUDGET OVERSIGHT HEARING
TESTIMONY OF EXECUTIVE DIRECTOR
JINWOO PARK

COMMITTEE ON THE JUDICARY & PUBLIC SAFETY HEARING
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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

Good morning, Chairwoman Pinto. Thank you for holding this budget oversight hearing on the D.C. Criminal Code Reform Commission (“CCRC”). I am Jinwoo Park, the agency’s Executive Director. While I appreciate the opportunity to testify today, it is unfortunate that we are holding a hearing today to discuss whether the CCRC should be funded and continue to operate. I was very surprised to learn that the Mayor’s proposed budget called for eliminating the CCRC. The CCRC would play a vital role in any subsequent code revision effort, and I have no doubt as to the value that our agency will bring to the District of Columbia well after a revised criminal code is enacted.

My remarks today will focus on the ongoing role that the CCRC has to play in ensuring that the District’s criminal justice system functions at the highest possible level by providing clearer, more just laws that advance public safety. The CCRC’s long term role can be divided into four general categories: 1) support passage and implementation of a revised criminal code; 2) provide ongoing maintenance to the criminal code; 3); revise separate portions of the D.C. Code that relate to criminal law that were unaddressed by the Revised Criminal Code Act (“RCCA”); and 4) serve as an independent source of research and analysis for the Council. I’ll touch on each of these roles in my testimony today.

Support Passage and Implementation of a Revised Criminal Code

Like many others, I was deeply disappointed that the federal government interfered in District affairs by striking down the RCCA. However, I’m heartened that so many of our leaders, including Councilmembers and the Mayor, have expressed support for the vast majority provisions included in the RCCA, and I believe that we can find consensus on a comprehensive modernization of our criminal code.

However, I strongly disagree that the CCRC has no role to play in a subsequent reform effort, even though the Commission has already issued its recommendations. The passage of the RCCA illustrates the key role the CCRC will play in a subsequent code revision effort. The CCRC first issued its recommendations in March of 2021, but the agency’s work did not end. Rather, the CCRC was heavily involved in supporting the RCCA’s ultimate passage. CCRC staff contributed immensely over the nearly 20 month period between when the CCRC issued its recommendations and the bill’s passage in late 2022. In fact, after the CCRC issued its initial recommendations in March, 2021, two CCRC staffers were detailed *full time* to this Committee to assist in the bill’s passage. My written responses to pre-hearing questions submitted to this Committee on April 11, 2023, discuss the arduous work CCRC staff performed in greater detail.

The CCRC’s institutional expertise in the revised criminal code will be vital to advising the Council and Mayor on additional proposed changes to a second version of a revised code. When the Councilmembers considered making changes to the original RCCA, they often sought out the CCRC’s guidance to ensure that their proposed changes were clearly written and consistent with other provisions in the RCCA. Even seemingly simple changes to a single line of text often

necessitated hours of meetings and consultations with CCRC staff. If a subsequent code revision effort includes even mere consideration of changes to the prior version of the RCCA, the CCRC will again provide advice to the Council to ensure clarity and consistency with the rest of the revised code.

The CCRC also played a role in responding to media inquiries, and questions and concerns raised by advocates and constituents. Councilmembers who received questions or critiques to the RCCA often contacted the CCRC to ensure their responses were accurate. I personally also conducted interviews with reporters, and attended meetings organized by Area Neighborhood Commissions and Citizens' Advisory Councils to discuss the RCCA, and answer questions residents had about the bill.

The CCRC will also play an essential role in the *implementation* of a revised criminal code. Recognizing that lawyers, judges, and other stakeholders in the District's criminal justice system will need significant time to learn the new code and to change policies and practices to align with the new code, the Council delayed the RCCA's applicability date for three years after its initial passage. For example, the D.C. Sentencing Commission will have to issue new sentencing recommendations for all felony offenses included in a revised code; the Redbook Committee, which drafts model jury instructions, will have to re-draft nearly all of its model jury instructions to align with new offenses in a revised code. The Sentencing Commission and Redbook Committee had already contacted the CCRC to establish ongoing working relationships to assist their transition to the new code. Lawyers, judges, and other stakeholders in the criminal justice system will also need training on the new code. For example, the Office of the Chief Financial Officer's Fiscal Impact Statement stated that officers in the Metropolitan Police Department would each need 120 hours of training on the new criminal code.¹ The CCRC would play a key role in assisting these trainings, by producing background materials, drafting user manuals, and either advising whatever parties would conduct these training sessions, or conducting training sessions directly.

There is no other agency within the District government that can replace the CCRC in these efforts. Even members of the former Advisory Group who spent years assisting formulating the CCRC's recommendations were never solely focused on the RCCA, and do not have the CCRC's expertise. Former Advisory Group members have contacted the CCRC to ask questions to better understand specific provisions in the RCCA: Does the general merger provision apply a legal or fact-based analysis? When does the voluntary intoxication statute allow imputation of recklessness? Which weapons offenses can a defendant be convicted of in a single case? Only the CCRC has the expertise to answer these questions, and the provide the support that is vital to passage and implementation of a revised criminal code.

¹ Fiscal Impact Statement – Revised Criminal Code Act of 2022, Glenn Lee, Chief Financial Officer, at 3.

Provide Ongoing Maintenance to the Criminal Code

Even after a revised criminal code is enacted, the CCRC will play an important role in providing ongoing maintenance to the code to ensure its quality is sustained over time. At the November 4, 2021 hearing held before this Committee, Michael Cahill, Dean of Brooklyn Law School, testified that codes that were revised decades ago have become worse over time as more provisions have been added in piecemeal fashion and that a standing commission can help maintain the quality of a criminal code. I believe Dean Cahill will testify again at today's hearing on this topic.

Legislators routinely propose new standalone pieces of criminal legislation. However, these pieces of legislation may be unnecessary if other provisions in the code already account for conduct criminalized under the new legislation. The new legislation may also be inconsistent with other provisions in the code or impose penalties that are disproportionate relative to penalties for other offenses of comparable severity. While adding new criminal offenses may be warranted, the legislation should be drafted after considering how the new offense would operate within the context of the entire revised code. In prior years the CCRC has provided testimony relating to standalone criminal legislation and would continue to play this role going forward.

The CCRC may, on its own initiative, suggest further alterations to the revised criminal code once it has been enacted. Unforeseen issues may arise once the revised code is in effect that warrant additional revisions. As examples, a novel form of harmful conduct may arise that is not adequately criminalized under the code; a specific offense in the code may be drafted too narrowly or too broadly; or a definition from the code's glossary may be confusing for lawyers, judges, and juries. No code of law is perfect, and further revisions may be necessary to address any unforeseen issues that arise in the future.

Criminal codes should evolve to account for changing behaviors, values, and interests. In prior decades public attitudes have changed, often significantly, which has led to changes to criminal statutes. Although we cannot predict what changes may occur in coming years, any body of law, including the criminal law, should continue to change accordingly. Even the best criminal codes must change over time, and the CCRC will ensure that the District's code continues to reflect District residents' values and interests, while also adopting best practices and innovations from around the nation.

Revisions to Separate Areas of Law not Addressed by the RCCA

The CCRC's work is not limited to revisions to the criminal code under Title 22. Even after a new criminal code is enacted and the CCRC has assisted District agencies in transitioning to the new code, there remain significant portions of District criminal law that have not been revised. These areas of law include criminal procedural rules under Title 23, law relating to defendants suffering from mental incapacity under Title 24, rules governing juvenile delinquency proceedings under Title 16, and rules of evidence which are largely uncodified. For example, D.C. Code § 23-112 under Title 23, which governs consecutive and concurrent sentencing, has never been revised.

This statute should at least be reviewed for possible issues that may arise when it is applied to a revised criminal code.

Revising any of these titles, or even just portions of these titles, will be an immense task comparable to revising the criminal code. The CCRC is uniquely situated to take on these large code reform projects given the agency's expertise in code revision and availability of staff to dedicate themselves full time to these efforts.

Independent Advisor to the Council

The CCRC can serve as a source of independent advice on criminal justice and public safety matters at the request of the Council. The CCRC's mandate states that the "Commission shall provide, upon request by the Council . . . 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."² If a Councilmember is considering proposing legislation related to criminal offenses, procedures, or reforms, but would like additional legal or policy analysis, the CCRC can assist the member at their request. This assistance may be especially valuable when Council and Committee staff are facing time and resource constraints that make it impractical to spend many hours researching and writing these analyses.

To conclude, I want to thank you, Chairwoman Pinto for holding this hearing today. I hope my team and I will have the opportunity to work with you and other Councilmembers in the coming years to revise our criminal code and to make many more important improvements to criminal law in the District.

I look forward to addressing the questions you have.

² D.C. Code § 3-152 (d).