



# D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 [www.ccrc.dc.gov](http://www.ccrc.dc.gov)

## MINUTES OF PUBLIC MEETING

WEDNESDAY, JUNE 7, 2017 at 2:00PM

CITYWIDE CONFERENCE CENTER, 11th FLOOR OF 441 4th STREET NW  
WASHINGTON, D.C. 20001

On Wednesday, June 7, 2017 at 2:00pm, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held in Room 1107 at 441 Fourth St., N.W., Washington, D.C. The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or [richard.schmechel@dc.gov](mailto:richard.schmechel@dc.gov).

### Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Bryson Nitta (Attorney Advisor)

Rachel Redfern (Chief Counsel for Management & Legislation)

Michael Serota (Chief Counsel for Policy & Planning) via phone

Jinwoo Park (Attorney Advisor)

### Advisory Group Members and Guests in Attendance:

Paul Butler (Council Appointee)

Donald Braman (Council Appointee)

Laura Hankins (Designee of the Director of The Public Defender Service for the District Of Columbia)

John Mannarino (Visiting Attendee of the United States Attorney)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Dave Rosenthal (Designee of the Office of the Attorney General)

Chanell Autrey (Representative of the D.C. Council Judiciary Committee)

**I. Welcome**

- a. The Executive Director noted that some staff attended the American Law Institute annual meeting (ALI) and that the organization’s main body gave final approval to new model provisions on sentencing. The Executive Director said that the new sentencing recommendations from the ALI represented a multi-year effort by leading experts nationwide, including several participants from the District’s judiciary and practitioner community. He said staff would be closely reading the final language as it becomes available, but many parts of the sentencing recommendations were previously finalized by the ALI and some have already been cited in the CCRC’s work.
- b. The Executive Director stated that the July 5, 2017 meeting will be held as scheduled. However, the meeting currently scheduled for August will be canceled in light of members’ availability. He will separately email members about their availability for an additional mid- or late-September meeting date.
- c. The Executive Director also said that staff will be distributing the next set of recommendations, relating to penalty enhancements and attempt liability, later that day or the following.

**II. Discussion of Commission Comments on First Draft of Report No. 3, Recommendations for Chapter 2 of the Revised Criminal Code—Mistake, Deliberate Ignorance, and Intoxication**

- a. There were no further questions or comments about this document.

**III. Discussion of Commission Comments on First Draft of Report No. 4, Recommendations for Chapter 1 of the Revised Criminal Code—Preliminary Provisions.**

- a. There were no further questions or comments about this document.

**IV. Discussion of Second Draft of Report No. 2, Recommendations for Chapter 2 of the Revised Criminal Code—Basic Requirements of Offense Liability.**

- a. The Public Defender Service (PDS) representative asked how the hierarchical rule of culpable mental state substitution—§ 22A-206(e), Proof of a Greater Culpable Mental State Satisfies Requirement for Lower—would apply to the definition of intent proposed in § 22A-206(b)(3) & (4). Staff replied that intent should be treated the same as knowledge. For example, proof of purpose will suffice for intent since purpose is a hierarchically superior culpable mental state. And proof of intent will suffice for recklessness or negligence since intent is a hierarchically superior culpable mental state. Staff acknowledged that this is not explicitly communicated in the

Revised Criminal Code, and that a conforming amendment to § 22A-206(e), to be released in the future, is necessary to clarify the point. Staff also clarified, however, that the relationship between intent, recklessness, and negligence is unlikely to arise much in practice since intent is primarily a drafting alternative to knowledge for use in inchoate crimes.

- b. The Office of the Attorney (OAG) representative noted that the culpable mental state definitions in § 22A-206 refer to “one’s conduct,” which phrase should be replaced with “his or her conduct.” Staff noted that it would further consider the issue as to the most clear, consistent drafting choice.

**V. Discussion of First Draft of Report No. 5, Recommendations for Chapter 8 of the Revised Criminal Code—Offense Classes & Penalties.**

- a. The Executive Director reviewed the caveats described in Advisory Group Memo No. 9 regarding the recommendations for offense classes and penalties. He also noted that the draft penalty classifications were chiefly modeled on the range of statutory maxima that are used under the current code.
- b. The OAG representative said that parental kidnapping would need to be an exception to the proposed definitions of felonies and misdemeanors. Even though the offense is punishable by less than one year, it must be categorized as a felony in order for the offense to be extraditable. The Executive Director noted that Draft General provision in § 22A-104 allows for specific offenses to deviate from the general provisions, and a unique designation of parental kidnapping as a felony may be appropriate. The Executive Director asked Advisory Group members to provide any other instances in which the designation of an offense as a felony or misdemeanor has other consequences beyond the maximum punishment allowable.
- c. The Executive Director noted that the classification of offenses does not affect statutory or mandatory minimum sentences, which is a matter to be revisited in the discussion of penalties in 2018 when reformed offenses and their gradations are better developed.
- d. The OAG representative noted that page 5 of the report states that “[t]his non-exhaustive list includes the typical sanctions for felonies[.]” But the OAG representative said that this sentence should refer to both felonies and misdemeanors.
  - i. The Executive Director said this seemed an appropriate change.
- e. The OAG representative also noted that on page 8 the text incorrectly states that offenses punishable by six months or more are subject to the Sixth Amendment right to a jury trial. The Supreme Court only held that offenses subject to a possible sentence of *more* than six months are subject to the Sixth Amendment right to a jury trial.
  - i. The Executive Director said this seemed an appropriate change.

- f. The OAG representative had questions about the language pertaining to alternative maximum fines for organization defendants. The OAG representative understood that this provision is modeled off of current law, but asked why the rule should be limited to Class A misdemeanors or felonies, as opposed to any misdemeanors or felonies. The OAG representative also asked why subsection (c), which allows for greater fines for organizational defendants should require that the offense be otherwise punishable by at least six months.
  - i. The Executive Director said the draft recommendations had simply followed existing law on this point and staff had not found any indication in the legislative history as to why the Council set fines as it did for organizational defendants. The Executive Director said staff would reexamine the matter and encouraged other members to submit comments on such a change if they had a view on what was most appropriate.
- g. The OAG representative asked about the provision for alternate fines sub-paragraph (c)(3) for crimes involving pecuniary gain or loss. The OAG representative said the specific amount gained or lost should only be required in the indictment when the proposed fine would exceed that otherwise authorized under sub-paragraph (a).
  - i. The Executive Director said this seemed an appropriate change.
- h. The PDS representative also noted that page 5 of the report, § 22A-802 (a)(6) of the proposed code cites to D.C. Code § 24-903. The correct citation should be § 24-904.01.
  - i. The Executive Director said staff would check on the matter.
- i. Professor Butler asked why the proposed maximum penalties are at times more severe than those proposed by the ALI. Professor Butler suggested that the final proposal should be closer to the ALI proposal.
  - i. The Executive Director noted that existing law is significantly more punitive than the ALI recommendations and that the CCRC recommendation as to Class 2 felonies, the penultimate penalty for very serious felonies, was modeled on the U.S. Sentencing Commission's treatment of 470 months as equivalent to a life sentence for statistical purposes. However, the Executive Director said it is reasonable for members to differ as to the precise penalty that should apply to Class 2 felonies and they should note any concerns in their written comments on the draft report.

## **VI. Adjournment.**

- a. The meeting was adjourned at 3:30 pm. Audio recording of the meeting will be made available online for the public.