



D.C. Criminal Code Reform Commission
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MINUTES OF PUBLIC MEETING
WEDNESDAY, JANUARY 6, 2021, at 10:00 AM

On Wednesday, January 6, 2021, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 180 216 5030). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

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| Richard Schmechel (Executive Director) | Rachel Redfern (Senior Attorney Advisor) |
| Jinwoo Park (Senior Attorney Advisor) | Margarita Bronshteyn (Social Scientist) |

Advisory Group Members and Guests in Attendance:

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| Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia) | Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety) |
| Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia) | Dave Rosenthal (Designee of the Attorney General of the District of Columbia) |
| Elana Suttentberg (Designee of the Acting United States Attorney's Office for the District Columbia) | Seema Gajwani (Visiting Attendee of the Office of the Attorney General of the District of Columbia) |
| Don Braman (Council appointee) | Nishant Keerikkatte (Visiting Attendee of the Office of the Deputy Mayor for Public Safety and Justice) |
| Paul Butler (Council appointee) | |

I. Welcome and Announcements.

- a. The Executive Director recognized the departure of Patrice Sulton from agency staff. The Executive Director thanked Ms. Sulton for all her contributions to the agency and work on the revised criminal code (RCC).

- b. The Executive Director gave an overview of the scope of Advisory Group Memo #40, Statistics on District Adult Criminal Charges and Convictions, issued December 31, 2020, which contains updated court statistics. Due to time constraints, the Executive Director was unable to add discussion of Memo #40 to this month's agenda, but will do so for February's meeting. The Executive Director made three points regarding Memo #40:
 - i. First, the years covered in the data in Memo #40—2010-2019—are the same years that were covered in prior Memo #38, issued July 31, 2020. The Executive Director noted that Memo #40 contains an additional sheet for 2009 data, although that data has been more difficult to clean.
 - ii. Second, the Executive Director stated that the organization of the data in Memo #40 is the same as the organization of the data in Memo #38 with one difference. Memo #38 limited data analysis to the first in time sentence. Memo #40, however, includes two additional sentences: 1) 72 hours after the initial sentence (chosen because it seems to be the end of the period of time for the court's quality assurance process); and 2) the last recorded entry to account for appeals and other changes to sentences. The Executive Director stated that there are some minor differences in analyses of court data in Memo #40 as compared to Memo #38, but they are negligible in the overall picture.
 - iii. Third, the Executive Director stated that the cumulative update to the RCC, Report #68 issued December 24, 2020, did not include penalty recommendations—RCC § 22E-603, Authorized Terms of Imprisonment, and the ordinal ranking of offenses spreadsheet. The Executive Director intends to issue those documents at the end of next week, with a month for the Advisory Group to issue written recommendations.
- c. The Executive Director discussed the timing and framing of the coming months prior to the Advisory Group vote to issue recommendations to the Council and Mayor.
 - i. The Executive Director stated that by statute, the Advisory Group has a month to submit written comments on “draft” recommendations and that the agency's “final” recommendations must be based on such comments that are timely received. The agency's statutory deadline to deliver final recommendations to the Council and the Mayor is March 31, 2021. The Executive Director stated that, per prior discussion, the Advisory Group will have a special meeting on March 24, 2021, for a vote on the agency's final recommendations.
 - ii. Given these statutory requirements, the Executive Director stated that between now and the Advisory Group Vote on March 24, 2021:
 - 1. On or by January 15, 2021, the agency will issue a report with updated RCC § 22E-603, Authorized Terms of Imprisonment, and updated classifications for specific RCC offenses.

2. Advisory Group written comments on Report #68, Cumulative Update to the Revised Criminal Code, are due on January 29, 2021.
 3. The February 3, 2021, Advisory Group meeting will discuss questions on the updated penalty recommendations as well as written comments received on Report #68 (and the statistical analysis in Memo #40).
 4. On or around February 15, 2021 will be the due date for Advisory Group written comments on the updated penalty recommendations.
 5. Staff will issue final recommendations on or by March 10, 2021, two weeks before the scheduled vote.
- iii. The representative from the Attorney General of the District of Columbia (OAG) stated that, due to the national elections and presidential inauguration, the compressed time schedule was particularly difficult, although OAG would meet the required deadlines.
 - iv. The Executive Director acknowledged the large scope of the work and suggested that to maximize the time for review and written comment, the Advisory Group not re-raise concerns in its written comments that have already been addressed. The Executive Director noted that Appendix D2 that accompanied the First Draft of Report #68 highlights and explains all the changes made to the RCC in this cumulative update.
 - v. The representative from the United States Attorney's Office for the District of Columbia (USAO) asked whether, in the next cumulative update, there would be new substantive recommendations. The Executive Director stated that the CCRC wasn't planning to issue additional reports on new topics before the March vote, but that there would be substantive changes to RCC recommendations in the updated penalty recommendations being issued next week, responses to any Advisory Group written comments on the updated penalty recommendations and Report #68, and possibly CCRC-initiated substantive changes to already existing material.

II. Discussion of First Draft of Report #68, Cumulative Update to the Revised Criminal Code

- a. The Executive Director highlighted two items in Advisory Group Memo #39, Supplemental Materials to the First Draft of Report #68, issued December 24, 2020.
 - i. First, as is discussed in the memo, there are two District of Columbia Court of Appeals cases that the agency needs to examine and that may require changes to the RCC—*Fleming v. United States*, 224 A.3d 213, 227 (D.C. 2020), cert. denied, 207 L. Ed. 2d 1059 (2020), pertaining to causation, and *Lucas v. United States*, 240 A.3d 328 (D.C. 2020), pertaining to the current D.C. Code bias enhancement. Agency staff would appreciate any Advisory Group comments on these two cases, particularly *Fleming*.

- ii. Second, as is discussed in the memo and accompanying materials, the RCC no longer has a general effective consent defense in the general part that pertains to certain offenses against persons. Instead, specific offenses have an effective consent defense that is tailored to that particular offense.
- b. The Executive Director asked if the Advisory Group had any questions about or difficulty navigating the materials that comprise Report #68.
 - i. The representative from USAO asked what it meant that RCC § 22E-1203, previously the menacing offense, was now marked as “Reserved.” The Executive Director stated that the previous RCC menacing offense is now wrapped into the RCC threats offense (RCC § 22E-1204) and that Appendix D2 explains this change. The Executive Director stated that “Reserved” is a temporary placeholder for RCC § 22E-1203 and ultimately the offenses in Chapter 12 of the RCC would have to be renumbered if menacing remains part of the threats offense. More generally, the Executive Director stated that “Reserved” is generally such a placeholder in the RCC pending final revisions and renumbering.
 - ii. The representative from the Public Defender Service for the District of Columbia (PDS) asked about the RCC definition of “dwelling.” PDS noted that “at the time of the offense” had been struck from the definition and that the definition now required that the structure “is either designed or actually used for lodging or residing overnight.” PDS noted that the Report #68 stated that this revision was intended to make the definition easier to read, but that it might actually be a substantive change that expands the definition to buildings that were designed for lodging or overnight use but haven’t been used so in a long time. The Executive Director stated it was not intended to be a substantive change and that staff would review it further.
 - iii. The representative from USAO noted that “cosmetic” procedures are now included in the effective consent defense that applies to several of the RCC offenses against persons, such as assault, and asked if the commentary discusses how a “cosmetic procedure” differed from a “medical” procedure. The Executive Director stated that he could review the commentary, but “cosmetic” was included due to the current D.C. Code and RCC definitions of “serious bodily injury” including “disfigurement.” The Executive Director noted there was little DCCA case law discussing disfigurement.
 - iv. The representative from USAO noted that “cosmetic” procedures were not included in the effective consent defense that applies to the lower gradations of the RCC assault offense. The Executive Director stated that is correct because for those lower gradations, an adult can consent to the required type of bodily injury without restriction.

- c. The Executive Director asked if there were further questions on Report #68. There were none. The Executive Director asked the Advisory Group to alert him to problems with the documents, such as missing text.
- d. The representative from the Public Defender Service thanked the staff for the work and through that has gone into the project.

III. Adjournment.

- a. The Executive Director said that the next Advisory Group meeting is February 3, 2021, at 10:00 a.m.
- b. There being no more questions or concerns raised by the Advisory Group, the meeting was adjourned at 10:57 a.m.