



D.C. Criminal Code Reform Commission

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

(202) 442-8715 www.ccrc.dc.gov

MINUTES OF PUBLIC MEETING

WEDNESDAY, APRIL 3, 2019, at 10:00 AM

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

On Wednesday, April 3, 2018, 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 in Room 1112 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.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)
(until 10:15am)

Michael Serota (Sr. Attorney Advisor)

Jinwoo Park (Attorney Advisor)

Patrice Sulton (Attorney Advisor)

Rachel Redfern (Sr. Attorney Advisor)(by phone) Blake Allen (Legal Intern)

Advisory Group Members and Guests in Attendance:

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

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

Dave Rosenthal (Representative of the Attorney General's Office)

Renata Kendrick Cooper (Designee of the United States Attorney for the District of Columbia)

Elana Suttentberg (Visiting Attendee of United States Attorney for the District of Columbia)

Paul Butler (Council appointee) (by phone)

I. Welcome and Announcements

1. Friday, April 12, 2019, is the deadline for comments on the First Draft of Report #35 - Cumulative Update to Sections 201-213 of the Revised Criminal Code.
2. A cumulative update will be released in the next two weeks. It will cover general inchoate offenses, merger, offenses against persons, property offenses, and other special part offenses. The update will be released together, however, the deadlines for comments will be staggered.
3. The Commission anticipates staff taking leave soon. Remaining staff will be focusing on weapon and drug recommendations to be released this summer, and the CCRC welcomes any advance notice of Advisory Group members' recommendations or concerns about these offenses.

II. The Advisory Group discussed the First Draft of Report No. 35, Cumulative Update to Sections 201-213 of the Revised Criminal Code and Advisory Group Memo #21 Supplemental Materials to the First Draft of Report # 35.

1. OAG asked for an explanation of how the government proves the second prong of the revised recklessness and negligence culpable mental states. Specifically, OAG wanted to know how the jury might be instructed on the clear blameworthiness standard, and how that standard might be argued at trial, given the moralistic and normative evaluation.
 - A. Staff referred OAG to the factors specified in the statutory definitions—i.e., the “nature and degree” of the risk disregarded by the person, the “nature and purpose” of the person’s conduct, and the “circumstances known” to the person. Staff also pointed to the accompanying Explanatory Notes, which provide a comprehensive explanation of how these factors, and the clear blameworthiness standard, operate.
 - B. Staff explained that the court can decide what qualifies as a legitimate societal interest as a matter of law—just as with the *de minimis* provision. On that point, PDS offered a hypothetical in which a person races into an intersection because he wants to get home in time to watch a football game in time. In this situation, an individual’s desire to not miss part of a football game would not be a legitimate societal interest, and therefore the judge need not allow the defendant to argue it.
 - C. OAG pointed out that the government may not have enough information to know whether the defendant’s mental state was morally blameworthy at the time of the offense. Staff responded that this is no different than determining whether a defendant acts “purposely,” “knowingly,” “maliciously,” “in the heat of passion,” in “reasonable self-defense,” or “in the absence of any justification or excuse”—all of which are currently applied District legal standards. Staff also noted that the widely-adopted Model Penal Code definitions of recklessness and negligence incorporate a similar statutory analysis; that various jurisdictions with similar statutory language simply restate that language in the jury instructions; and that it would be unworkable to codify the multi-page explanation of blameworthiness.
 - D. PDS explained that the Redbook committee may offer a standard hypothetical to explain the concept, such as the rain example that is typically used to explain direct versus circumstantial evidence.
 - E. Staff noted that similar complexity is reflected in causation under current District law.

III. Adjournment.

- a. There being no further questions, the meeting was adjourned early, at 10:30am.