



D.C. Criminal Code Reform Commission

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

MINUTES OF PUBLIC MEETING

WEDNESDAY, JULY 11, 2018 at 10:00 AM

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

On Wednesday, July 11, 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:

Rachel Redfern (Sr. Attorney Advisor)

Michael Serota (Sr. Attorney Advisor)

Jinwoo Park (Attorney Advisor)

Patrice Sulton (Attorney Advisor)

Advisory Group Members in Attendance:

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)

I. Welcome and Announcements

- a. Senior Attorney Advisor Rachel Redfern opened the meeting and noted that written comments are due Friday for the First Draft of Report No. 21 and the First Draft of Report No. 22.
- b. Ms. Redfern noted that the scheduled August 1, 2018 meeting has not been moved.
- c. Ms. Redfern noted that the Executive Director intends to email the Advisory Group soon about offense data.
- d. Agency staff noted that the next set of written materials will likely include reports pertaining to merger, rioting, disorderly conduct, and failure to disperse. The comment period will be at least eight weeks long and will likely close in mid-September.

II. The Advisory Group discussed First Draft of Report No. 21: Kidnapping and Related Offenses.

- a. PDS raised several concerns about the affirmative defense to criminal restraint in RCC § 22A-1404(d). First, PDS prefers that this exception be decriminalized within the statute instead of being determined at trial. Second, if the defense applies only to (a)(2)(D) and not to (A), (B), and (C), the offense captures conduct that is discipline of a child by a parent or close relative that should be lawful. Hypothetically, a grandmother who tells a child to get into the car has restrained the child without the child's consent in violation of (a)(2)(A) and cannot avail herself of the affirmative defense.
- b. In response to PDS's concern, the representative from the Committee on the Judiciary and Public Safety suggested adding or revising language that clarifies a minor's freedom to consent to movement.
- c. Agency staff responded that the intent is not to criminalize the conduct in the hypothetical raised by PDS. A future draft will reassess whether this concern would be best addressed by revising the statutory language, revising the commentary, through a general justification defense, or through a specific child disciplinary defense.

III. The Advisory Group discussed First Draft of Report No. 22: Accomplice Liability and Related Provisions.

- a. PDS inquired as to whether a person must have a legal duty to act to be held liable for an omission. Agency staff confirmed that is correct, as indicated on page 4 of the Report.
- b. PDS inquired as to what constitutes a legal duty to act. Agency staff responded that a duty exists when the court or a statute says it exists, such as a fiduciary duty or parental duty.
- c. PDS offered a hypothetical wherein a mandatory reporter such as a teacher or social worker knows that a child will be abused by a parent and omits to report it. Agency staff responded that the teacher would not be liable as an accomplice unless it could be proven that she consciously desired for the parent to abuse the child. As explained on page 5 of the Report, mere awareness that one's aid or encouragement is likely to promote or facilitate criminally prohibited conduct is insufficient to establish accomplice liability. Other statutes may criminalize such behavior.

- a. PDS requested further clarification of when a person could be liable as an accomplice when they act only recklessly as to a result. Agency staff offered a hypothetical wherein a person gives car keys to an intoxicated person with the purpose that he or she drive home. If the driver hits and kills someone, the person who gave the driver the keys may be guilty of a reckless homicide, if the person was aware of a substantial and unjustifiable risk that death would result.
- b. PDS inquired as to whether premeditation or deliberation would be considered culpable mental states under the revised complicity statute, even though they are not defined among the mental states in RCC § 22A-206. Agency staff confirmed that is correct, as indicated in footnote 5 of the Report.

IV. The Advisory Group discussed Memorandum No. 19: Supplemental Materials to the First Draft of Report No. 22.

- a. Advisory Group members did not have any questions or comments relating to this memorandum.

V. Adjournment.

- a. The meeting was adjourned at 10:38 AM. Audio recording of the meeting will be made available online for the public.