



Criminal Code Reform Commission  
FY 2019  
Second Quarter Report

SUBMITTED TO THE COUNCIL  
May 15, 2019

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION  
441 FOURTH STREET, NW, SUITE 1C001 SOUTH  
WASHINGTON, DC 20001  
PHONE: (202) 442-8715  
[www.ccrc.dc.gov](http://www.ccrc.dc.gov)

## PREFACE

The Criminal Code Reform Commission (CCRC) submits this quarterly report summarizing its recent activities, as required by statute.<sup>1</sup> This report concerns the second quarter of FY 2019, from January 1 through March 31, 2019. The CCRC's last quarterly report, on the first quarter of FY 2019, was submitted to the Council as part of the agency's 2018 Annual Report on January 24, 2019.<sup>2</sup>

## CCRC STATUTORY AUTHORITY

The CCRC began operation as a new, independent District agency on October 1, 2016, pursuant to the Council of the District of Columbia's Fiscal Year 2017 Budget Support Act of 2016. The CCRC is tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations to revise the language of the District's criminal statutes within specified parameters.<sup>3</sup> In preparing these reform recommendations, the CCRC is required to consult with a Code Revision Advisory Group (Advisory Group), a statutorily designated group of stakeholders who review and provide information and suggestions on proposals prepared by the CCRC. The Advisory Group consists of 5 voting members and 2 nonvoting members.<sup>4</sup> Approval by a majority of the Advisory Group is required for final recommendations

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<sup>1</sup> D.C. Code Ann. § 3-154(a) ("The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter.").

<sup>2</sup> Available online at <http://lims.dccouncil.us/Legislation/RC23-0017?FromSearchResults=true>.

<sup>3</sup> The CCRC's mandate in D.C. Code § 3-152(a) states:

[T]he Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to: (1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses; (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary; and (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

<sup>4</sup> The current voting members of the Advisory Group are: Don Braman, Associate Professor of Law, George Washington University School of Law (Council Appointee); Paul Butler, Professor of Law, Georgetown University Law Center (Council Appointee); Renata Kendrick Cooper, Special Counsel for Policy and Legislative Affairs, United States Attorney's Office for the District of Columbia (Designee of the United States Attorney for the District of Columbia); Laura Hankins, General Counsel, Public Defender Service for the District of Columbia (Designee of the Director of the Public Defender Service for the District of Columbia); and Dave Rosenthal, Senior Assistant Attorney General, Office of the Attorney General for the District of Columbia (Designee of the Attorney General for the District of Columbia).

The current non-voting members of the Advisory Group are: Kevin Whitfield, Policy Advisor, Committee on the Judiciary and Public Safety (Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety); and Helder Gil, Legislative and Policy Advisor, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

to be submitted to the Council and the Mayor.<sup>5</sup> In preparing its reform recommendations the CCRC also reviews criminal code reforms in other jurisdictions, changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.<sup>6</sup>

## NOTABLE CCRC ACTIVITIES JANUARY – MARCH 2019

### *Development of Reform Recommendations*

The CCRC's work to develop recommendations for reform of District criminal statutes is guided by the Work Plan and Schedule that was first provided to the Council on February 9, 2017, as part of the agency's 2016 Annual Report. The Work Plan and Schedule divides the development of code reform recommendations under the CCRC's statutory mandate into four Phases. The CCRC's activities during the second quarter of FY 2019 continued its work on Phase 2 (General Provisions for a new Title 22A) and Phase 3 (Reformed Offenses for a new Title 22A) of the Work Plan and Schedule.

As part of Phase 2, the CCRC continued its development of reform recommendations to the Council and Mayor that provide a standard toolkit of rules, definitions, and principles for establishing criminal liability that will apply to all reformed offenses. Such work addresses several of the agency's statutory mandates.<sup>7</sup> Specifically, in the second quarter, CCRC staff delivered to its Advisory Group for comment one new draft report as part of Phase 2, as follows:

- In its First Draft of Report #35, submitted for Advisory Group review on March 12, 2019, the CCRC presented a cumulative update to sections 201-213 of the draft Revised Criminal Code (RCC). These provisions concern matters such as voluntariness and causation requirements, accomplice liability, and definitions of culpable mental states. This cumulative update made numerous changes in response to prior Advisory Group written comments and made other changes recommended by the CCRC staff to RCC §§ 201-213.

In the second quarter the CCRC also discussed with the Advisory Group, at its March 6, 2019 meeting, the Phase 2 recommendations contained in the First Draft of Report #34, *De Minimus Defense*.

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<sup>5</sup> D.C. Code § 3-153(e).

<sup>6</sup> D.C. Code § 3-152(c)(2).

<sup>7</sup> D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; ... (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; ... (10) Propose such other amendments as the Commission believes are necessary . . .”).

As part of Phase 3, the CCRC continued its development of reform recommendations to the Council and Mayor that concern certain common and serious offenses. Specifically, in the second quarter, CCRC staff prepared a lengthy cumulative update to all specific offenses in the RCC. (While not released in the second quarter of FY 19, the cumulative update was subsequently released to the Advisory Group for comment on April 18, 2019 as First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code.*)

In the second quarter the CCRC discussed with the Advisory Group previously circulated draft recommendations concerning Phase 3 offenses against persons, including: Sex Assault and Related Provisions,<sup>8</sup> Human Trafficking,<sup>9</sup> and Stalking.<sup>10</sup> Other previously circulated draft recommendations discussed with the Advisory Group in the second quarter include: Escape,<sup>11</sup> Tampering with a Detection Device,<sup>12</sup> and Correctional Facility Contraband.<sup>13</sup> These recommendations were discussed at the February 6, 2019 and the March 6, 2019 Advisory Group meetings. (The Advisory Group meeting planned for January 2019 was cancelled due to federal agency members' inability to attend during the shutdown.)

When finalized, the recommendations developed in Phases 2 and 3 of the Work Plan will be combined with later work in Phase 4, forming a single, cohesive set of reform recommendations for District crimes in a new Title 22A. The combined, final reform recommendations will be presented in the CCRC's final report to the Council and Mayor by the statutory deadline.<sup>14</sup>

### ***Agency Administration & Other Activities***

**Data.** In the second quarter agency staff worked with volunteer graduate students at the George Washington University Trachtenberg School of Public Policy and Public Administration to formulate a public opinion survey of District residents. The survey, modeled on prior surveys conducted of Pennsylvania and New Jersey, was designed to measure opinions about the relative seriousness of criminal offenses in order to help guide the agency's recommendations about penalty proportionality. The survey was not completed or administered, however, in the second quarter of FY 19.

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<sup>8</sup> The CCRC issued its First Draft of Report # 26 Sexual Assault and Related Provisions, on September 26, 2018.

<sup>9</sup> The CCRC issued its First Draft of Report # 27 Human Trafficking and Related Statutes, on September 26, 2018.

<sup>10</sup> The CCRC issued its First Draft of Report # 28 Stalking, on September 26, 2018.

<sup>11</sup> The CCRC issued its First Draft of Report # 31 Escape from Institution or Officer, on December 28, 2018.

<sup>12</sup> The CCRC issued its First Draft of Report # 32 Tampering with a Detection Device, on December 28, 2018.

<sup>13</sup> The CCRC issued its First Draft of Report # 33 Correctional Facility Contraband, on December 28, 2018.

<sup>14</sup> Pending Council budget legislation would extend the CCRC's statutory funding and authorization one year, to September 30, 2020. If such an extension occurs, the agency will create a new Work Plan and Schedule to include development of a wider array of reform recommendations and to optimize efficiency.

*Testimony.* On February 8, 2019 the CCRC Executive Director testified before the Committee on the Judiciary and Public Safety as part of its performance oversight hearings.

## CONCLUSION

The CCRC's code reform work in the second quarter of FY 2019 focused primarily on preparation of cumulative updates to its prior draft recommendations for new provisions and offenses. This update was designed to incorporate prior comments of the agency's Advisory Group, as well as other changes recommended by staff based on further review. Staff issued 1 new draft report to the Advisory Group containing updated recommendations regarding voluntariness, causation, accessory liability, and culpable mental state definitions. The Advisory Group met two times during the third quarter (one meeting was cancelled due to the federal shutdown) to discuss new and previously circulated draft recommendations.

All agency draft recommendations, as well as minutes for the agency's Advisory Group meetings are available on the CCRC website at [www.ccrcc.dc.gov](http://www.ccrcc.dc.gov). For additional details or questions about the CCRC's activities or operation, please contact the agency's Executive Director, Richard Schmechel.