



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001

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

MINUTES OF PUBLIC MEETING

**THURSDAY, NOVEMBER 10, 2016 AT 1:00 PM
441 4TH STREET N.W., ROOM 1114, WASHINGTON, D.C., 20001**

On Thursday, November 10, 2016 at 1:00 pm, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Revision Advisory Group (Advisory Group). The meeting was held in Room 1114 at 441 Fourth St., N.W., Washington, DC. 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)

Bryson Nitta (Attorney Advisor)

Rachel Redfern (Chief Counsel for
Management & Legislation)

Jinwoo Park (Attorney Advisor)

Michael Serota (Chief Counsel for Policy &
Planning)

Advisory Group Members in Attendance:

Dave Rosenthal (Designee of the Attorney
General for the District of Columbia)

Donald Braman (Council Appointee) (By
Phone)

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

Helder Gil (Designee of the D.C. Deputy
Mayor for Public Safety and Justice) (By
Phone)

Chanell Autrey (Designee of the
Chairperson of the Council Committee on
the Judiciary)

I. Welcome.

- a. The Executive Director called the meeting to order at 1:05.
- b. The Executive Director informed the Advisory Group members that this and other meetings would be recorded in accordance with the Open Meetings Act.

II. Introductions of Advisory Group Members & CCRC Staff.

- a. Commission staff and Advisory Group members introduced themselves.

III. Discussion of CCRC Mandate, Draft Work Plan, and Draft Schedule.

- a. The Executive Director discussed the CCRC statutory mandate using the Advisory Group Memorandum #1, which was distributed prior to the meeting.
 - i. The Executive Director noted that the CCRC staff previously had been housed within the D.C. Sentencing Commission under a different statutory mandate. Because some of the Advisory Group members had worked with CCRC staff while the project was at the D.C. Sentencing Commission, he noted that the CCRC mandate differed in important ways from the D.C. Sentencing Commission's mandate.
 - ii. The Executive Director emphasized that the new mandate includes all District criminal statutes - including hundreds and hundreds of regulatory-type misdemeanors outside of Title 22. Due to the statutory two-year deadline for the project and resource limitations, the focus of the CCRC will be on felonies and commonly-used misdemeanors within Title 22, as well as some outside of Title 22.
 - iii. The Executive Director noted that the new mandate includes examining overlap and gaps between offenses, adjusting penalties for proportionality, and creating gradations where necessary. The prior iteration of the project had not addressed these and other aspects of code reform that are part of the new mandate.
 - iv. The Executive Director said the ultimate goal of the CCRC is to provide draft legislation, commentary addressing changes to criminal law, and relevant statistics to the D.C. Council.
 - v. Finally, the Executive Director said that the sources for code reform will include current District law, Advisory Group member input, and code reforms in other jurisdictions.
- b. The Executive Director discussed the CCRC draft work plan and schedule using the description in Advisory Group Memorandum #1 which was distributed prior to the meeting.

- i. The draft work plan outlined the projected sequence of work for the next two years, the length of the agency's statutory mandate. There are four phases in the Work Plan.
- ii. Phase I is very similar to prior "enactment plus" recommendations completed at the D.C. Sentencing Commission. Because the CCRC mandate contains some of the same duties that the project had at the D.C. Sentencing Commission, Phase I updates the prior work. The goal is to deliver the Phase I materials to the Council and Mayor by January 2017.
 1. Mr. Rosenthal suggested moving the agency review date to a week later than January 4th.
 2. The Executive Director said he would consider the need to extend the date for written comments on Phase I beyond the current two months if an agency needed extra time. The Executive Director said an extension of time for Phase I should not affect comment due dates for subsequent Phases and therefore was possible. However, extensions of comment due dates for subsequent Phases could jeopardize the overall success of developing comprehensive reform within two years and likely will not be feasible. He noted that agencies who do not submit written comments in time to be considered as part of the staff's final recommendations may still have their comments included with the final recommendations that go to the Council and Mayor.
- iii. Phase II develops the draft General Part. Most of the General Part provisions are going to be substantially similar to the General Part provisions developed at the D.C. Sentencing Commission, but new provisions will be added that the Advisory Group members will need to address for the first time. Some provisions in the General Part (e.g. conspiracy) will be addressed after Phase II. New parts in Phase II will include statutes on subjects such as willful blindness and attempt. Also included in the Phase II General Part will be penalty classifications and statutory enhancements (e.g., senior citizens, bias-related crime). Phase II will not involve the actual setting of penalties for offenses, but will involve setting up the penalty classes' various maximum imprisonment and fines. Phase II will be delivered in at least two pieces to the Advisory Group. The first piece will be delivered in December, and then a second piece in February.
- iv. Phase III will develop reform recommendations for specific offenses. Reform recommendations will go out in groups: property, person, etc. The Executive Director said that there are no set time periods at this moment.

- v. Phase IV will develop reform recommendations for setting penalties for offenses that were revised in Phase III. This will involve ordinal ranking of crimes' seriousness, then placing offenses in the penalty classifications.
- vi. The Executive Director said that recommendations developed in Phases II - IV will all go to the Council and Mayor together before September 30, 2018. The package will include a bill, commentary, individual comments from Advisory Group members, and statistics. It will include a cover report from the CCRC asking the Council to pass the bill.

IV. Discussion of CRAG Review Process.

- a. The Executive Director discussed the expected process for Advisory Group members' consultation.
- b. Step 0 would be early consultation between staff and any Advisory Group member that wishes to preliminarily discuss an offense before formal work commences on the offense.
- c. Step 1 would be the CCRC providing the Advisory Group with first drafts consisting of offense language and commentary.
- d. Step 2 would be the submission of Advisory Group members' written comments on the first draft of recommendations - the statutory deadline for this commentary is a minimum of one month. The Executive Director said that it is possible to give more time, and he will endeavor to do so, but there is a hard time crunch given the statutory deadline. The Executive Director emphasized that CCRC staff will meet individual Advisory Group members to go over issues or comments - he noted this is particularly important given the difficulty of scheduling full Advisory Group meetings.
 - i. Mr. Rosenthal asked whether there would be additional time for an agency review.
 - ii. The Executive Director said that the Advisory Group process does not provide for separate times for members to provide comments and then for the members' agencies to review material and provide additional comments. There will be just one period for written comments from all members on the CCRC first draft of recommendations.
 - iii. Mr. Rosenthal also asked whether the agency's written comments would need to be more formal than were sometimes provided while at the D.C. Sentencing Commission. For example, what if OAG wished to note that some offenses related to, but not in, the CCRC recommendations could be reformed? Strictly speaking, such comments may not be apt since they are not about the draft recommendations.
 - iv. The Executive Director said that it is part of the CCRC statutory mandate that the agency must make public all written comments on draft

recommendations. Regarding the example Mr. Rosenthal provided, the Executive Director said that this sort of note about closely related offenses would be appropriate for inclusion in Advisory Group member's formal written comments because it builds a better record for the Council about relevant considerations. Even if an agency hasn't fully reviewed or committed to a position, raising a possible issue in the formal written comments is desirable so long as appropriate caveats and qualifiers are provided about the comment.

- e. Step 3 would be the CCRC providing the Advisory Group with a second draft of the recommended reforms to statutes and commentary, based on the Advisory Group members' initial comments. This second draft will also include a copy of each Advisory Group members' written comments.
- f. Step 4 would be an Advisory Group vote on the second draft of recommendations.
 - i. Mr. Rosenthal asked about the granularity of votes. He noted the possibility that an Advisory Group member agrees with 95% of a set of recommendations but cannot approve the remaining 5%. Could a separate vote be taken on that 5%?
 - ii. The Executive Director said that votes preferably would be as broad as possible, including many recommendations on like subject matter rather than piecemeal voting. He said that it was impossible to predict in advance what degree of agreement the Advisor Group may have and what granularity of voting may be necessary. However, he recognized that more granular voting may be necessary. He also noted that granular voting may not be necessary if the vote is phrased to be not on whether a member agrees as to every part of the draft recommendations, but whether a member agrees that the draft recommendations are an appropriate basis for legislative consideration notwithstanding a member's disagreements with some parts of the recommendations.
 - iii. Ms. Hankins asked how proxy voting works. The Executive Director said that Advisory Group members can either give their proxy to another Advisory Group voting member, or send another duly-authorized person from the Advisory Group member's agency.
 - iv. Mr. Rosenthal asked whether current members could send someone else from their office to vote in their place. The Executive Director said that, in such an instance, he would prefer a letter designating a new representative from the principal named in the CCRC statute.
- g. Step 5 would be an opportunity, after approval by a majority vote per Step 4, for Advisory Group members to submit additional comments on the final recommendations.

- h. The Executive Director said that the CCRC hopes to receive every Advisory Group members' thoughts on the recommendations. The CCRC would like to synthesize members' perspectives as much as possible before the final product is delivered to the Council.
- i. The Executive Director said that compared to the prior process at the D.C. Sentencing Commission, a big shift will be reliance on providing and reviewing written comments, rather than oral comments at full Advisory Group meetings. He said the new process of consultation with the Advisory Group is necessary to meet the statutory deadline. He noted that there will still be a number of in-person full Advisory Group meetings, and CCRC staff welcomes the opportunity to discuss matters with individual or smaller groups of Advisory Group members on request.
- j. The Executive Director emphasized that CRAG members can submit their own draft statutory language to the CCRC as part of their written comments, and that would be helpful to the CCRC and welcomed.
- k. The Executive Director said that staff will generally only propose one recommendation for reforming a given statute, to ensure the recommendations are cohesive and the Council and Mayor aren't overwhelmed with variants. However, he noted that some recommendations for reform (e.g., setting penalties) may require staff to present alternatives to the Advisory Group (and, on approval, to the Council and Mayor). But staff will not routinely recommend alternative recommendations for reform of a statute.

V. Scheduling of Future Advisory Group Meetings.

- a. The Executive Director said that since not all members were present at the current Advisory Group meeting he would email members to set up a meeting in the second week of January. He said he would also poll members about a standing monthly meeting time in 2017.
- b. Additionally, the Executive Director also briefly stated that Advisory Group members may need to undergo DC Board of Ethics and Government Accountability (BEGA) ethics training.

VI. Discussion of First Draft of Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes.

- a. Staff stated that the recommendations in the CCRC First Draft of Report #1, "Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes," update the recommendations that the D.C. Sentencing Commission had unanimously approved in September 2015. The Report was distributed prior to the Advisory Group meeting.

- b. The Executive Director reminded Advisory Group members that January 4th is the deadline for comments on the first draft of the report and appendices.
- c. Staff explained that one major way the draft legislation differs from the previous project at the D.C. Sentencing Commission is that all recommended additions, amendments and repeals are packaged in one bill. As part of this restructuring of the bill, the portion of the bill that enacts Title 22 makes the recommended changes directly to the text of Title 22. Staff noted that the enactment portion of the draft legislation includes language that specifically states the bill is not intended to change the law, except for the changes listed in the “Statement of Legislative Intent for the Enactment of Title 22” contained in the bill.
- d. Staff said the list of archaic and unused offenses recommended for repeal was the same as the Sentencing Commission had approved, except that one offense, D.C. Code § 22-3306, was removed from list of offenses recommended for repeal due to potential Home Rule Act questions. In addition, the current draft legislation contained two conforming amendments to accommodate the repeal of two of the archaic and unused provisions recommended for repeal.
- e. Staff said that technical amendments to statutes were essentially the same as the D.C. Sentencing Commission had approved, but that the set of statutes addressed was smaller. This time, only statutes or offenses outside of Title 22 that were charged were considered, in addition to all of Title 22. Additional instances of gendered language were identified and corrected in the current draft legislation.
- f. Staff said that the recommendations concerning unconstitutional statutes were the same as the D.C. Sentencing Commission had approved.
- g. Staff said the CCRC had identified two additional common law offenses since the D.C. Sentencing Commission’s vote on the previous project. The two additional pure common law offenses are: being a common scold and disturbing public worship. There was no change in the recommendation to revise the District’s reception statute so that these and any other common law offenses are abolished.
 - i. Mr. Rosenthal asked whether common law disturbing public worship is covered under 22-1321. Staff said the conduct might be covered, but probably not. Mr. Rosenthal suggested adding a footnote to specify that 22-1321 is not affected by abolishing the common law offense.
- h. Staff said that its recommendations concerning relocation of offenses are slightly different compared to what the D.C. Sentencing Commission had approved. Three new sections in Title 22 are recommended for relocation from Title 22: Section 22-4251, which had been inadvertently omitted from the materials the D.C. Sentencing Commission voted on, and § 22-1842 and § 22-1843, civil provisions pertaining to human trafficking that were passed after the D.C. Sentencing Commission’s vote. In addition, § 22-4331 is no longer

recommended for relocation because it contains a criminal penalty, whereas it had been recommended for removal previously.

- i. Staff said that its recommendations concerning enactment of Title 22 are different compared to what the D.C. Sentencing Commission had approved. The text of Title 22 in the enactment portion of the bill resolves discrepancies between the code language and the organic and amendatory act language that the D.C. Sentencing Commission had left unresolved. These discrepancies and their resolution are discussed in detail in Appendix VI, and staff briefly summarized them for the Advisory Group.
 - i. Mr. Rosenthal asked whether statutes recommended for relocation are moved into an enacted title because, if so, new legislation would be required to move the statutes into those titles.
 - ii. The Executive Director said that determining which specific titles to move relocated statutes to was the responsibility of the Council's Codification Counsel. The CCRC would be in touch with the Codification Counsel once the package was delivered to the Council.
- j. Staff noted that the CCRC had checked for relevant statistics on the offenses affected by the report's recommendations, but that it was awaiting information from the D.C. Sentencing Commission. The D.C. Sentencing Commission initially responded to the CCRC request for data with a blanket denial. However, the Executive Director said he was following up and was hopeful that the D.C. Sentencing Commission would provide the requested data, per the CCRC statute. He said that he would keep the Advisory Group apprised.

VII. Adjournment.

- a. The meeting adjourned at 2:45pm.