



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, FEBRUARY 7, 2018 at 10:00 AM

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

On Wednesday, February 07, 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 1107 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)

Jinwoo Park (Attorney Advisor)

Rachel Redfern (Chief Counsel for Planning)

Michael Serota (Chief Counsel for Policy & Management & Legislation)

Advisory Group Members and Guests in Attendance:

Paul Butler (Council Appointee) via phone

Renata Kendrick Cooper (Designee of the United States Attorney)

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

Dave Rosenthal (Designee for the Attorney General) via phone

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

I. Welcome

- a. The Executive Director noted that the Criminal Code Reform Commission is still searching for a new attorney, and looking to hire summer interns.
- b. The Executive Director also noted that the Commission has received a new data set from the D.C. Superior Court with information on attempts, but that staff has not yet had the opportunity to analyze the data.
- c. The Executive Director also noted that written comments from the Advisory Group for draft reports currently under review are due March 2, 2018.

II. The Advisory Group discussed written comments on the First Draft of Report No. 8 Recommendations for Property Offense Definitions, Aggregation, Multiple Convictions.

- a. The Advisory Group began its discussion of the Public Defender Services (PDS) comments on Report No. 8. The PDS written comments noted that the definition of “motor vehicle” should more clearly exclude vehicles that can be propelled by human effort. In addition, the PDS comments noted that although a “truck tractor” should be included in the definition, a trailer or semitrailer should not be included in the definition of motor vehicle.
- b. The Executive Director noted that due to technological change, smaller vehicles powered by electric motors have become cheaper and more common. It is unclear as a policy matter which specific vehicles should be included in the definition of “motor vehicle.”
- c. The Office of the Attorney General (OAG) representative noted that a possible solution is that the definition of motor vehicle can be limited to vehicles based on a particular top speed, or maximum power output, which is a common way of defining motor vehicles for some other traffic offense statutes.
- d. The U.S. Attorney Office (USAO) representative asked whether drones would be included in the definition of motor vehicle, and questioned whether different definitions for a motor vehicle are needed for property offenses as compared to offenses against persons.
- e. The PDS representative also asked whether watercraft should be treated the same as other motor vehicles for grading property offenses, or if the monetary value of watercraft will sufficiently address theft of watercraft.
- f. After discussion of these matters the Executive Director said that staff would seek to clarify in a second draft that motor vehicles must be suitable for the transportation of people, not merely objects. Beyond that, staff would welcome additional guidance from members on where to draw an appropriate line between covered.

III. The Advisory Group discussed comments on the First Draft of Report #12 – Definition of a Criminal Conspiracy and Advisory Group Memo #13 – Definition of a Criminal Conspiracy.

- a. The Advisory Group discussed PDS’s comment that conspiracy liability should be limited to conspiracies to commit felonies. Staff questioned whether as a practical matter conspiracies to commit misdemeanors are actually ever charged. Staff also noted that penalties for conspiracy will likely be based on the penalty for the target offense, which may address some proportionality concerns. Staff will reconsider the issue after penalties/relevant merger rules have been determined.
- b. The Advisory Group discussed the OAG comment which noted that deleting language relating to conspiracy “to defraud the District of Columbia” could decriminalize conduct. Staff noted that this could be true to the extent that the revised fraud statute no longer criminalizes some conduct covered by a conspiracy “to defraud the District of Columbia[.]” However, this concern could be addressed by separate statutes that separately criminalize the conduct.
- c. The Advisory Group discussed OAG’s comments regarding unilateral conspiracy, and whether the revised language changes current District law. Staff noted that there is no clear precedent under current law for unilateral conspiracy liability.
- d. Staff noted that PDS’s comment concerning use of “and” instead of “or” more clearly articulates the culpable mental state rule applicable to conspiracy. It will be incorporated into the Second Draft of Report No. 12.
- e. Staff also agreed that PDS’s proposed revision concerning deletion of “immaterial” in the jurisdictional provisions (as well as the proposed relabeling) would enhance the clarity and accuracy of the statute. It will be incorporated into the Second Draft of Report No. 12.
- f. The Advisory Group discussed the OAG comment that suggested language pertaining to conspiracies formed outside the District should cover not just conduct that would constitute a criminal offense under the “D.C. Code,” but also any conduct that would constitute a criminal offense under “District law.” The OAG representative noted that some criminal offenses are in the DCMR, not the D.C. Code. Staff noted that it would further consider the issue, and follow up with OAG if necessary.

IV. The Advisory Group Discussed Advisory Group Memo No. 15, Supplementary Materials to First Drafts of Reports #13-17.

- a. The Executive Director noted that the memo clarifies that, as of this time, staff has not planned any exceptions to the proposed default rule that the maximum imprisonment or fine allowed for any attempted offense will be set at fifty percent of the maximum sentence or fine for the completed offense. However, if any

Advisory Group members feel that there are specific offenses for which the default rule establishes penalties that are too severe or too lenient, group members should identify those offenses and bring them to staff's attention.

V. The Advisory Group Discussed First Draft of Report No. 13 - Criminal Attempt Penalties.

- a. The PDS representative noted that one example provided of an inadequate penalty for attempt is the current penalty for attempted murder. The PDS representative asked whether any defendants are actually charged with attempted murder. Staff noted that application of the 50% discount attempt rule in some cases may increase maximum penalties, and in other cases decrease maximum penalties. PDS noted that it would like data as to the frequency of attempt convictions and relevant penalties.
- b. The Executive Director said that, with the data received in the prior week, analysis of attempts would begin shortly.

VI. The Advisory Group Discussed First Draft of Report No. 14 – Definition for Offenses Against Persons.

- a. The Executive Director noted that the staff's goal is for definitions to be consistent across all offenses, although there may be exceptions where definitions must be different in the context of property offenses as compared to person offenses.

VII. The Advisory Group Discussed First Draft of Report No. 15 – Assault and Offensive Physical Contact Offenses.

- a. The Executive Director noted that in any offense in which effective consent is a defense, staff is still considering whether to draft new language that addresses whether minors or incompetent persons can provide effective consent, and if so, in which contexts. Whether minors or incompetent persons can provide effective consent may differ in the context of ordinary assault-type offenses, and sexual assault offenses.
- b. The OAG representative noted that any changes to law regarding assault with intent to commit other offenses may affect Title 16, which specifies when minors can be tried as adults. The Executive Director said this would be noted for future consideration, similar to how the definition of crime of violence in Title 23 may be affected.
- c. The PDS representative asked about fourth degree assault, which includes negligently causing bodily injury by means of a firearm, regardless of whether the firearm was loaded. The PDS representative asked why fourth degree assault should include negligently causing injury with an unloaded firearm, if it does not include negligently causing injury using another object. Staff noted that most reform jurisdictions include a version that includes negligently causing injury by use of a firearm. Including the clause specifying that unloaded firearms are included was based on current District case law which does not distinguish between loaded and unloaded firearms. The

Executive Director acknowledged that the fact patterns in which a person negligently causes bodily injury with an unloaded firearm are unlikely to actually occur, and that staff would review the language.

- d. The Executive Director noted that a major issue across all offenses against persons is restructuring how penalty enhancements will apply. The current D.C. Code includes numerous enhancements with no clear indication as to how and whether the different enhancements can be used together. Staff is planning on integrating these enhancements into grading factors for specific offenses. However, if CRAG members feel that enhancements should remain independent as an organizational matter, staff would appreciate feedback.
- e. The Executive Director also noted that staff has not yet addressed simple possession of firearms or other weapons, including possession during a crime of violence or dangerous crime. Staff may draft a separate possession offense that criminalizes possession of weapons (including non-firearms), apart from their use in conjunction with another crime.
- f. The Executive Director also noted that staff did not address merger in the most recent set of reports. Staff is still considering which offenses should merge, and how to whether and how to set forth merger rules in statute. However, decisions about merger will depend on the gradations and scope of the offenses, so staff will see what comments there are on the current draft language before addressing merger provisions for these offenses against persons.

VIII. Adjournment.

- a. The meeting was adjourned at 11:50 am. Audio recording of the meeting will be made available online for the public.