



# District of Columbia Sentencing and Criminal Code Revision Commission

---

441 4th St, NW, Suite 830 South, Washington, DC 20001  
Telephone (202) 727-8822 Fax (202) 727-7929

## **FULL COMMISSION MEETING MINUTES**

Tuesday, January 26, 2010  
Judiciary Square, Room 1117  
Washington, DC

### Attendance:

Frederick. Weisberg	Laura Hankins	
Patricia Riley	Margaret Quick (CSOSA)	
Vida Johnson	Don Braman	Barbara Tombs
Ron Gainer	Alfred Durham	Ken Cowgill
Jennifer Seltzer-Stitt	Anne Seymour	Chan Chanhatasilpa
Dave Rosenthal		

- I. Call to order at 5:10 p.m.
- II. Barbara Tombs announced that the newly hired Staff Attorney will be Courtnei Burleson. She was selected from three finalists identified by the Search Subcommittee and will start on Monday, February 14th. Her resume was disseminated.
- III. Briefing on Criminal Code Revision

Ken Cowgill gave a presentation that summarized three proposals for completing the criminal code revision project, proposals set forth in detail in a memorandum previously distributed to the Commission. He summarized that the potential scope of work would include adopting the Model Penal Code or some variation of it or to clean up the existing code to some degree. He suggested that the work would probably incorporate a combination of the two approaches.

The options are (see handout for more detail):

*Proposal 1: Penalty proportionality for felony fine and imprisonment provisions.* Prepare recommendations to revise felony fine provisions so they are proportionate. Then prepare recommendations to revise felony imprisonment provisions. As necessary, adjust fine provisions for any felony which had an imprisonment provision changed.

Dave Rosenthal suggested that the Commission could start with the felony penalty proportionality issue and turn to proportionality of misdemeanors since they are fairly non-controversial. Ken Cowgill agreed that this additional task would be relatively easy.

*Proposal 2: Model Penal Code (MPC).* This proposal entails adopting, presumably only in part, the Model Penal Code to replace the extant D.C. Criminal code. It could be done instead of Proposal 1 or in addition to Proposal 1. It is divided into parts as follows:

2A: General Part. This proposal entails adopting, presumably only in part, the Model Penal Code's so-called General Part.

2B: Model Penal Code Crimes. This proposal entails adopting, presumably only in part, the Model Penal Code's various criminal provisions.

2C: Model Penal Code Both Parts. This proposal entails taking on both 2A and 2B.

Ron Gainer suggested that the Commission does not need to go through all of the offenses within a specific crime category to test the general part. We can start with testing one offense for each crime category.

*Proposal 3: Mere Code Clean-Up.* This proposal entails merely cleaning up the extant code by eliminating anachronisms and by imparting uniformity, consistency and organization.

In short, Proposal 1 could be done with current staffing. Proposal 3 could also be done with current staffing. Proposal 2-A would require the addition of two new attorneys, one of whom would have to be very experienced. Proposals 2-B and 2-C would require four new attorneys, including one very experienced one, plus one additional support staff person.

Judge Weisberg asked if staffing can be increased incrementally, for example if the Commission chose to do Proposal 1 and then tackled Proposal 2A. This would be an important question for the City Council. Barbara Tombs answered that she believed it might be better to assess all of the staffing needs and ask the City Council at once because it would be more difficult to request additional staff as the project progresses or incrementally.

Don Braman suggested that the clean-up will not necessarily be easier than the more complete revision. Anne Seymour asked if the budget would allow for the combination option of the proposals. Ron Gainer stated that in his experience the greatest amount of time will be spent on the general part of the Model Penal Code.

Laura Hankins stated that she believes the Commission can start with a MPC test case and work on the fines and proportionality issue. The test case would involve staff proposing adoption of one part of the MPC General Part and submitting that proposal to

the Commission. However, she expressed pessimism that the commission could complete a large comprehensive code revision.

Judge Weisberg added that with code revision, there will be disagreements and that the Commission will not be able to come to consensus on many issues. It is likely that a comments section will need to be attached to many of the decisions. He did agree that doing a test case first would be worthwhile.

#### IV. Ranking of New Offenses

Ken Cowgill presented a list of new offenses that need to be ranked (see handout). Judge Weisberg questioned why Unauthorized Use of a Vehicle (UUV) during a crime of violence and UUV during a crime of violence with injury were both ranked in Master Group 7. Following a discussion, the Commission agreed to postpone consideration of ranking of the latter offense.

The Commission then voted to rank the new offenses as recommended, excluding the second UUV offense. The vote was 8-0 in favor of the proposed rankings.

#### V. Commission went into Executive Session

Adjourn: 6:30 pm

#### NEXT MEETING:

Tuesday, February 23, 2010, One Judiciary Square (441 4<sup>th</sup> St., NW), 11<sup>th</sup> Floor.