



**Testimony of
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**On Criminal Code Reform
Commission**

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Columbia, Committee on the
Judiciary & Public Safety

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I'm Nazgol Ghandnoosh, Co-Director of Research at The Sentencing Project and a DC resident of Ward 1. I am also a member of the DC Sentencing Commission.

The Criminal Code Reform Commission (CCRC, "the Commission") plays a critical role in moving DC towards an informed, well-researched, and evidence-based lawmaking process. I feel proud as a DC resident to have witnessed the impact of their work on our legislative process. I urge you, for the second year in a row, to reject the mayor's proposal to defund the Commission. I hope that the Council recognizes that the Commission is a prized gem in our government that should be safeguarded locally and emulated nationally.

I elaborate below on two exemplary strengths of the CCRC: its success in amassing a vast body of knowledge about the criminal code locally and across the country, and its deliberative process of bringing together a wide range of stakeholders to reach a consensus about recommended reforms.

The Commission's Vast Expertise

Recently, the Council turned to the expertise of the Commission while responding to acute crime concerns. The Commission drafted and advised on numerous provisions that were either considered by the Council, or passed into law as part of the Secure DC omnibus bill. This includes the reckless endangerment with a firearm offense, definitions of significant and serious bodily injury, changes to mental state required for the possession of a large capacity ammunition device offense, and merger provisions that prevent disproportionate and duplicative penalties.

The CCRC has also been comprehensively examining maximum penalties authorized under criminal codes in other jurisdictions, and has begun a rigorous analysis of national sentencing norms. This kind of guidance will be critical again when the Council considers other future changes to the criminal code.

Over many years, the Commission demonstrated its vast expertise in the process of developing the Revised Criminal Code Act (RCCA), a modernization overhaul of the criminal code. Congressional intervention prevented the full passage of this law. But to advance justice, equity, and to reassert local autonomy, the Council must resume the work of passing the RCCA. The CCRC will play a crucial role in guiding deliberations when the Council resumes this work, as well as later in ensuring effective implementation of this law.

The Spirit of Code Reform

As criminologists and legal scholars have noted, key principles of criminal law contribute to the law's moral authority, which in turn promote public safety. That's because when criminal laws are seen as legitimate, people are more willing to allow the criminal legal system to address the harms that

they've experienced, rather than give up hope in our public institutions and potentially take justice into their own hands.

But currently, DC's criminal code violates certain key principles of criminal law, which the Commission sought to address through the RCCA. The principle of proportionality means that more serious crimes are punished more severely. The Commission has identified vast inconsistency in the criminal code and the RCCA's proposed gradations would have addressed this problem.

Another key tenet of our criminal legal system is equal justice under law. This is something that DC residents see engraved on the front entrance of the U.S. Supreme Court, but we also know it remains a distant aspiration in a city that is 46% Black but where Black residents account for 93% of the prison population.¹

Reforms in the RCCA would have helped to reduce disparities produced by the criminal justice system. Eliminating nearly all mandatory minimums and scaling back extreme sentences are two ways that the RCCA would have reduced racial disparities in sentencing.²

The Commission Informs Debates

Legal experts and criminologists help to both broaden and deepen our understanding of criminal law and its consequences. But the lawmaking process for criminal laws in DC is both *democratic*—responsive to public debate on this highly charged issue—and *undemocratic*, because our bills live or die at the whim of people in the federal government who we did not elect. In both the public debate and in the Congressional one, CCRC has been a beacon of truth.

When a *Washington Post* editorial included a misleading characterization of how penalties change under the RCCA, Jinwoo Park, Executive Director of the CCRC, responded promptly with a letter to the editor to set the record straight.³

¹ Calma, E. & Sayin, Y. (2023). *A look at who is incarcerated in D.C.'s criminal justice system*. DC Policy Center.

² Ghandnoosh, N., Barry, C., & Trinkka, L. (2023). *One in five: Racial disparity in imprisonment—causes and remedies*. The Sentencing Project; Muhammad, K.G., Western, B., Negussie, Y., & Backes, E. (2022). *Reducing racial inequality in crime and justice: science, practice, and policy*. National Academies of Sciences, Engineering, and Medicine.

³ Park, J. C. (2023, January 17). D.C.'s criminal code retains significant penalties for violent crime [Letter to the editor]. *Washington Post*. <https://www.washingtonpost.com/opinions/2023/01/17/dc-criminal-code-retains-significant-penalties-violent-crime/>

As members of Congress debated whether to respect the District’s autonomy, or to overturn a law unanimously passed by a majority-Black legislature, my colleagues at The Sentencing Project and I relied heavily on informative documents produced by the CCRC that countered misinformation.

Unfortunately, facts do not always carry the day and so we’re back to square one, with some bruises, and still the need to modernize DC’s criminal code.

Unfinished Commission Business

In addition to serving as an indispensable repository of information about DC’s criminal code and how it compares to others around the country, the Commission also plays a key role in bringing together stakeholders to arrive at unified recommendations. The voting members of the Commission’s advisory group, which included the District’s Office of the Attorney General and the U.S. Attorney’s Office for the DC, unanimously approved the recommended bill which then became the Revised Criminal Code Act. This was a landmark achievement.

The Commission also helped to inform the Council in the process of drafting and revising the RCCA. Even in vetoing the bill, the mayor stated that there was consensus on 95% of the bill’s provisions and that the Council should proceed with passing a bill with those provisions.⁴ The mayor called those provisions a “significant and much needed update to our criminal code.”⁵

We must preserve, rather than abolish, the CCRC. We must double our efforts to overhaul the code via the RCCA and via further code reforms. As the Council and the mayor’s office consider revisions to the RCCA, the Commission’s expertise and facilitation will be particularly crucial in ensuring that any changes are based on facts and evidence, and are legally sound. Their recent work analyzing sentencing trends by crime type nationwide will provide critical context for assessing RCCA’s proposed sentencing changes.

While we wait to regroup and achieve that goal, the Commission will also play an important role in other criminal legal reforms, including reforms to criminal procedure provisions in Titles 16, 23, and 24 and pending recommendations for revision in Titles 22 and 50, including traffic, controlled substance, animal cruelty, and public corruption offenses.

⁴ Mayor’s Veto Letter for B24-0416, “Revised Criminal Code Act of 2021.” https://lms.dccouncil.gov/downloads/LIMS/47954/Other/B24-0416-Bill_24-416_veto_letter_from_the_Mayor.pdf

⁵ See note 4.

And once we have revised our criminal code, the Commission will be crucial in ensuring that our new laws are properly implemented, and help to guide debates about additional revisions. CCRC has been, and will be, go-to experts for the DC Sentencing Commission and the Red Book Committee. They will help to develop training materials for practitioners, judges, and the Metropolitan Police Department. In addition, their planned statistical analyses of sentencing changes following the RCCA will be critical for understanding the impact of the law.

Conclusion

The CCRC has amassed a level of expertise into sentencing that no other DC government agency, or private-sector organization, offers. The Council should protect the Commission, which strengthens DC lawmaking and helps advance the cause of justice, equity, and autonomy.