

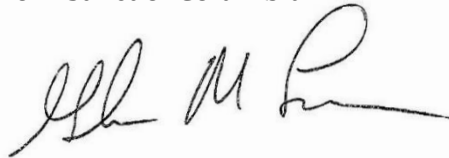
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Glen Lee
Chief Financial Officer 

DATE: October 26, 2022

SUBJECT: Fiscal Impact Statement – Revised Criminal Code Act of 2022

REFERENCE: Bill 24-416, Committee Print as provided to the Office of Revenue
Analysis on October 19, 2022

Conclusion

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill costs \$4.7 million in fiscal year 2023 and \$52.9 million over the financial plan to implement.

Background

The Criminal Code Reform Commission (CCRC) was established in 2016 to provide recommendations to the Mayor and Council on how to revise the District's criminal code. The intent of the CCRC was to clarify, modernize and make the criminal code more precise. Specifically, the CCRC concluded the criminal code should provide a section of definitions, interpretative rules and culpability principles; revise specific offenses; and revise penalties to improve penalty proportionality between offenses. On March 31, 2021, the CCRC transmitted its recommended revisions to the Mayor and Council. The Revised Criminal Code Act of 2022 (RCCA) reflects the statutory changes necessary to implement the CCRC's recommendations.

In summary, the RCCA does the following:¹

- Standardizes every element of a criminal offense.
- Establishes culpable mental state definitions.

¹ By repealing Title 22 the District of Columbia Official Code and replacing with new Title 22A.

- Establishes defenses, including self-defense, defense of others, defense of property, execution of public duty, exercise of parental duty of care, duress, entrapment, and excusing mental disability.
- Standardizes penalty classifications with nine felony classes and five misdemeanor classes.
- Updates penalty enhancements.
- Eliminates mandatory and statutory minimum sentences.
- Expands a defendant's right to a jury trial for misdemeanor cases carrying jail time beginning in fiscal year 2027.
- Updates Second Look² eligibility to include individuals who committed a crime when they were over 25 years of age, provided they have completed at least 20 years of their sentence.
- Eliminates juvenile delinquency proceedings for offenses committed by children under twelve.
- Raises the dollar-value threshold for felony grades of most property offenses from \$1,000 to \$5,000.
- Decriminalizes certain offenses including possession of drug paraphernalia, panhandling, and illegal vending.
- Specifies the maximum imprisonment penalties authorized for any offense and eliminates the life without release penalty.

The bill has an applicability date of October 1, 2025.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill costs \$4.7 million in fiscal year 2023 and \$52.9 million over the financial plan to implement.

The bill will primarily impact how defendants are charged, their pleas or trials, and their sentences. Currently the federal government employs and pays the costs of judicial proceedings, including prosecution of adults for felonies and some misdemeanors, public defense, and the incarceration of convicted adults. This fiscal impact statement is not required to assess any impacts of the bill on federal agencies.

Law enforcement agencies are also affected by criminal code reform, however, because they must ensure decisions to detain and arrest people are not arbitrary and that investigations gather all evidence relevant to a prosecution and a defense of any charges filed. The bill's revisions to the code are extensive, covering 97 percent of offenses that are charged in court. The revisions can be meaningful to judicial outcomes, as evidenced by the numerous hypothetical cases CCRC members discussed in hundreds of pages of comments to drafts of its work. Due to the extensive nature of the bill, the Metropolitan Police Department (MPD) requires sufficient training to allow the entire force to make correct detention and investigative decisions from the day the new code will be effective. MPD officers, for example, receive criminal law training at the police academy, but that training is only a baseline that is supplemented by on-the-job training from superiors over years.

² Second Look allows individuals to petition the court to reduce any defendant's terms of imprisonment if, after serving at least 15 years' imprisonment, the court finds that the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification. (D.C. Official Code § 24-403.03).

The bill will impact nearly all law enforcement agencies operating in the District of Columbia, including District agencies, federal agencies,³ and regional and private partners that operate special police forces.⁴ Law enforcement officers and public safety attorneys employed with, or contracted by, the following District agencies will need to be trained on the revised criminal code statutes to perform their job duties.

- Metropolitan Police Department (MPD)
- Office of the Attorney General (OAG)
- Department of Corrections (DOC)
- Department of Fire and Emergency Services (FEMS)
- Department of General Services (DGS)
- District of Columbia Public Library (DCPL)
- District of Columbia Public Schools (DCPS)
- Office of Unified Communications (OUC)
- Department of Forensic Science (DFS)
- University of the District of Columbia (UDC)

The fiscal impact of the bill for each of these agencies is detailed below. All provisions must be funded prior to the implementation of the bill.

Metropolitan Police Department

The District agency that is most impacted from a cost standpoint is MPD. A total of 3,700 police officers, including 100 reserve officers, must receive 120 hours of training on the new criminal code prior to the effective date of the bill on October 1, 2025. While officers are training, their shifts must be covered by officers that are working overtime. MPD will hire a Project Manager to oversee the training program. MPD will also hire two Curriculum Developers and will contract with a training provider to guide the curriculum development and implement the training for both its personnel and all law enforcement officers employed with or contracted by the District government. The contractor must also provide instructors and training space since MPD has no excess capacity to complete trainings at the scale required to meet the effective date in the bill.

MPD also requires a Project Manager and Policy Analyst to rewrite internal MPD policies and two Staff Attorneys, one starting in fiscal year 2024 and one starting in fiscal year 2025, to answer an anticipated increase in legal questions that arise from officers working in the field. The Office of Communications must hire an additional Communications Specialist to help manage messaging internally and with the public about changes to the criminal code. Finally, the Police Academy must hire three employees (terms expiring in fiscal year 2026) including a Project Manager and two Curriculum developers to revise training according to the bill's code revisions. The total salary and fringe costs for these employees will be \$503,000 in fiscal year 2023, assuming a January 1, 2023 start date, and \$2.99 million over the financial plan.

³ Such as the District of Columbia Courts, the United States Attorney for the District of Columbia, Federal Bureau of Investigation, US Capitol Police, US Park Police, US Secret Service, US Marshalls, US Sentencing Commission, Public Defenders Service, and Court Services and Offender Supervision Agency.

⁴ Including Private Police Forces, Campus Police Departments, WMATA Metro Transit Police, and Criminal Defense Attorneys.

MPD must hire contractors to update over a dozen law enforcement related IT systems⁵ to reflect the changes to the criminal code. The IT upgrades are expected to be completed over four years and cost \$850,000 in fiscal year 2023 and \$5 million over the financial plan.

Metropolitan Police Department Total Costs (\$ thousands)					
Agency Total Costs	FY 2023	FY 2024	FY 2025	FY 2026	Total
Training Costs ^(a)	\$1,500	\$17,613	\$17,891	\$0	\$37,004
MPD Administrative Staff Salary ^{(b)(c)(d)}	\$503	\$831	\$997	\$662	\$2,993
MPD Administrative Staff Fringe	\$92	\$156	\$191	\$130	\$569
IT Costs	\$850	\$2,455	\$1,170	\$525	\$5,000
Total	\$2,945	\$21,055	\$20,249	\$1,317	\$45,566

Table Notes:

- (a) Assumes funding for curriculum development in fiscal year 2023 and payment of overtime for 120 hours of training per officer over fiscal years 2024 and 2025. Includes the cost of instructors, space rental, and training materials.
- (b) Assumes a total of eight employees including one Grade 15, Step 5 Project Manager; one Grade 13, Step 5 Policy Analyst; two Grade 14, Step 5 Staff Attorneys, one hired in fiscal year 2024 and one in fiscal year 2025; one Grade 12, Step 5 Public Affairs Specialist; one Grade 14, Step 5 Academy Project Manager (Term Employee); and two Grade 13, Step 5 Academy Curriculum Developers (Term Employees).
- (c) Assumes 1.75 percent salary cost growth and a fringe rate of 18.3 percent. Assumes fringe cost growth of 2.375 percent.
- (d) Assumes employee start date of January 1, 2023.

Office of the Attorney General

OAG must train approximately 100 public safety division attorneys and paralegals on the new criminal code since they handle all crimes committed by juveniles and certain adult misdemeanors.⁶ OAG will also need to update data systems, rewrite policies, update internal forms, and coordinate with law enforcement partners to implement the code changes. OAG will hire six employees for three-year terms to help implement these changes ahead of the effective date of the bill. OAG will also hire a permanent data analyst to continue to track and monitor outcomes after the updated criminal code is effective. OAG will also contract with a vendor to update its IT systems. In total, the OAG requires \$1.02 million in fiscal year 2023 and \$3.8 million over the financial plan to implement the bill.

Office of the Attorney General Total Costs (\$ thousands)					
	FY 2023 ^(c)	FY 2024	FY 2025	FY 2026	Total
Salary ^(a)	\$655	\$888	\$904	\$141	\$2,588
Fringe ^(b)	\$134	\$186	\$194	\$31	\$546
IT Costs	\$233	\$233	\$233	\$0	\$700
Total	\$1,022	\$1,308	\$1,331	\$172	\$3,834

⁵ Including updates to RMS, WALES, AFIS, Mugshots, Evidence.com, Evidence-on-Q, CCTV, HTR, Clerk API, Court Fees, Columbo, Coplogic, and DWH Feeds.

⁶ Including certain weapons offenses, quality-of-life offenses, municipal regulation offenses, fraud against the District, domestic violence, and elder abuse.

Table Notes:

- (a) Includes two Grade 15, Step 4 Senior Attorneys, one Grade 12, Step 4 Paralegal, one Grade 14, Step 5 Data Analyst, One Grade 13, Step 5 IT Project Manager, two Grade 12, Step 5 IT Analysts. Assumes cost growth of 1.75 percent.
- (b) Assumes fringe rate of 20.5 percent and fringe growth of 2.375 percent.
- (c) Assumes employee start date of January 1, 2023.

Training for Ancillary Agencies with Law Enforcement Personnel

There are several other agencies, including the Department of Corrections (DOC), District of Columbia Public Library (DCPL), Department of General Services (DGS), District of Columbia Public Schools (DCPS), the University of the District of Columbia (UDC), and the Department of Fire and Emergency Services (FEMS), that directly employ or contract with law enforcement officers that will require training on the updated criminal code. The law enforcement officers at these agencies do not need training that is as detailed as MPD officers. However, a baseline understanding of the criminal code is necessary in the event that they must make an arrest and collect evidence. Each of these agencies will need funding to pay overtime while personnel complete training on the updated criminal code in fiscal year 2025. Below is a summary of the training costs for each agency.

Training for Ancillary Law Enforcement Officers Total Cost (\$ thousands)			
Agency	Number of Trainees	Training Hours Required	Cost in FY 2025 ^(a)
Department of Corrections ^(b)	100	40	\$293
District of Columbia Public Library ^(c)	35	40	\$36
Department of General Services ^(d)	90	40	\$232
District of Columbia Public Schools ^(e)	20	40	\$47
Fire and Emergency Services ^(f)	25	40	\$77
University of the District of Columbia ^(g)	20	40	\$58
Total			\$743

Table Notes:

- (a) Includes the cost of instructors and training materials.
- (b) Assumes average overtime rate of \$60 per hour.
- (c) Assumes average overtime rate of \$42 per hour.
- (d) Assumes average overtime rate of \$60 per hour.
- (e) Assumes average overtime rate of \$60 per hour.
- (f) Assumes average overtime rate of \$75 per hour.
- (g) Assumes average overtime rate of \$46 per hour.

Agencies may need to complete additional IT updates that are necessary to implement the new criminal code that are unknown at this time. There may also be additional costs to train special police officers that are under contract with DGS and DCPS. The effect that any potential training may have on the cost of these contracts is unknown at this time.

Two agencies also will need to train employees in fiscal year 2025 but can include the trainings into their current training regimen. The Office of Unified Communications (OUC) will provide one hour of

training to call operators and the Department of Forensic Sciences (DFS) will provide four hours of training to crime scene investigators. OUC and DFS do not require additional resources to prepare for the implementation of the updated criminal code.

Deputy Mayor for Public Safety and Justice

Due to the scope of the bill, the Deputy Mayor for Public Safety and Justice (DMPSJ) will hire a project management consultant to develop an implementation strategy that identifies training requirements for each relevant agency, establishes a timeline to update and integrate IT systems, and further refines the long-term cost estimates of implementing the bill. The contract for a project management consultant is expected to cost \$750,000 in fiscal year 2023 and \$2.8 million over the financial plan.

Deputy Mayor for Public Safety and Justice Total Cost (\$ thousands)					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Project Management/Program Coordination Consultant	\$750	\$1,018	\$1,035	\$0	\$2,803

Table Notes:

(a) Assumes start date of January 1, 2023.

Criminal Justice Coordinating Council

The bill will also impact the Criminal Justice Coordinating Council (CJCC) which will have to complete IT upgrades to the JUSTIS system and complete three reports that analyze the impact of the right to a jury trial on the criminal justice system four years, six years, and seven years after the implementation of the bill. CJCC can update JUSTIS with existing resources. CJCC will likely need resources to hire consultants to complete the studies required in the bill. However, these studies fall outside of the financial plan and are excluded from this fiscal impact statement.

Bill 24-416, Revised Criminal Code Act of 2022 Total Cost by Agency (\$ thousands)					
Agency	FY 2023	FY 2024	FY 2025	FY 2026	Total
Metropolitan Police Department	\$2,945	\$21,055	\$20,249	\$1,317	\$45,565
Office of the Attorney General	\$1,022	\$1,308	\$1,331	\$172	\$3,834
Department of Corrections	\$0	\$0	\$293	\$0	\$293
District of Columbia Public Library	\$0	\$0	\$36	\$0	\$36
Department of General Services	\$0	\$0	\$232	\$0	\$232
District of Columbia Public Schools	\$0	\$0	\$47	\$0	\$47
Fire and Emergency Services	\$0	\$0	\$77	\$0	\$77
University of the District of Columbia	\$0	\$0	\$58	\$0	\$58
Deputy Mayor for Public Safety and Justice	\$750	\$1,018	\$1,035	\$0	\$2,803
Total Costs	\$4,717	\$23,380	\$23,358	\$1,489	\$52,945