

Final Report of the
CRIMINAL CODE REVIEW STUDY COMMITTEE

to the

SIXTY-FOURTH GENERAL ASSEMBLY

of the

STATE OF IOWA

Submitted January, 1971

CHAIRMAN'S REPORT
OF THE
CRIMINAL CODE REVIEW STUDY COMMITTEE

This report summarizes the activities of the Criminal Code Review Study Committee and its subcommittees since December 16, 1969, when this Study Committee's first report was submitted to the Iowa Legislative Council.

The Criminal Code Review Study Committee is currently comprised of the following members:

Representative William Hill, Chairman
Senator Gene W. Glenn, Vice Chairman
Senator Quentin V. Anderson
Senator R. Dean Arbuckle
Senator Chester O. Hougen
Senator George E. O'Malley
Senator Harold Thordsen
Representative Norman G. Jesse
Representative Luvern W. Kehe
Representative Robert M. Creamer
Representative Thomas A. Renda
Representative David E. Weichman
District Judge James P. Denato
District Judge Mark McCormick
Professor Ronald L. Carlson
Professor John J. Yeager
Mr. James Van Ginkel, Attorney
Mr. Frederick G. White, Attorney

The services of the following Legislative members of the Criminal Code Review Study Committee will be lost to the Committee as of January 12, 1971:

Representative William Hill, Chairman
Senator George E. O'Malley
Senator Chester O. Hougen
Representative Thomas A. Renda
Representative David E. Weichman

The bulk of the work of the Criminal Code Review Study Committee has, since the previous report was submitted, been conducted through three of its four subcommittees, namely the Criminal Procedure Subcommittee, the Substantive Criminal Law Subcommittee, and the Sentencing and Post-conviction Subcommittee. The full Study Committee has met only once since December of 1969. That meeting was called for the purpose of (1) receiving subcommittee progress reports, (2) for discussing the affect upon Study Committee membership of the June primary election, and (3) to resolve

certain budget problems which had arisen in conjunction with federal fund availability. A brief summary of the proceedings of that meeting follows:

(1) Professors Ronald Carlson and John J. Yeager, Study Committee members and drafting consultants, both indicated in their progress reports that the proposed drafts of the Criminal Procedure and Substantive Criminal Law Subcommittees would hopefully be completed for review by the full Study Committee by mid-September. Completion of the drafts has not been accomplished as had then been anticipated; however, considerable progress is being made by both Subcommittees.

(2) The Study Committee decided that those members who were defeated in the June primary election should be encouraged to continue to serve on the Committee until the expiration of their terms. The affected members have complied with this request.

(3) The budgeting problems of the Study Committee were resolved by the adoption of an appropriate motion granting the Legislative Service Bureau sufficient flexibility in the distribution of federal funds as they become available.

CRIMINAL PROCEDURE SUBCOMMITTEE

The Criminal Procedure Subcommittee is currently comprised of the following members:

Senator Quentin V. Anderson, Co-Chairman
Representative Norman G. Jesse, Co-Chairman
Representative Thomas A. Renda
Judge James P. Denato
Mr. Frederick C. White
Mr. Ira Morrison (currently serving in consultant capacity since membership on the Study Committee has not yet been approved by the Legislative Council)

The Subcommittee, with Professor Ronald Carlson as drafting consultant, has held six meetings as of this date and has reviewed, in whole or in part, seventeen chapters of the proposed criminal procedure revision. Professor Carlson and his staff, in cooperation with the Legislative Service Bureau, is currently proceeding with a compilation into one document of those chapters which have been tentatively approved by the Subcommittee. No definite deadline date has been set for completion of this document, but work is progressing at an encouraging rate. Several of the more interesting criminal procedure proposals are as follows:

1. A "no knock" search and seizure provision which will permit, under restricted circumstances, the unannounced entry of a peace officer into a dwelling or other structure for the purpose of obtaining evidence to be used in a criminal prosecution. This proposal is more restrictive than any which has been enacted in the United States to date.

2. A provision to permit the physical restraint of a defendant in a courtroom, or his outright removal therefrom, when his behavior is so disruptive as to interrupt the orderly judicial process.

3. A provision to permit trial without jury upon waiver by defendant, and preserving the right of the prosecution to veto defendant's waiver of jury trial.

4. A provision to require that all cases be brought to trial within seventy-five days after arrest of defendant, and allowing extensions of that time limit for certain reasons which must be specified in the record of the case.

SUBSTANTIVE CRIMINAL LAW SUBCOMMITTEE

The Substantive Criminal Law Subcommittee is currently comprised of the following members:

Senator Gene W. Glenn, Co-Chairman
Representative Robert M. Creamer, Co-Chairman
Senator George E. O'Malley
Mr. Charles Vanderbur
Judge Mark McCormick

The Subcommittee has held nineteen meetings as of this date, and Professor John J. Yeager, drafting consultant, has obtained tentative approval of twenty-six chapters of the proposed substantive revision. The Legislative Service Bureau is cooperating with Professor Yeager in compiling this material into one document for submission to the full Committee. Several of the more interesting substantive proposals are as follows:

1. A provision to classify felonies according to their degree of seriousness, ranging from class A for the most serious felony to class D for the least serious.

2. A provision to classify misdemeanors into three categories, simple, indictable, and aggravated.

3. A provision to strike the offense of treason against the state. (This decision is based upon the fact that no Subcommittee member was able to conceive of an act which would constitute treason against the state.)

4. An abandonment of those provisions which declare deviant sexual acts between consenting adults, or between individuals and animals, to be unlawful.

5. A provision which separately treats sexual offenses committed against children.

The draft proposals of both the Substantive and Procedure Subcommittees have been presented in separate sessions to the

Iowa District and Municipal Court Judges Association, where a great many valuable comments and suggestions were obtained. A summary of the drafts has also been presented to the Iowa State Bar Association's Special Committee on Criminal Law, where further valuable comments and suggestions were obtained. The drafts will also be reviewed at a meeting of the Iowa County Attorney's Association to be held in the very near future.

SENTENCING AND POST-CONVICTION SUBCOMMITTEE

The Sentencing and Post-conviction Subcommittee, which has been recently activated, is constituted of the following members:

Senator Harold O. Thordsen, Co-Chairman
Representative William Hill, Co-Chairman
Senator R. Dean Arbuckle
Representative Norman G. Jesse
Judge James P. Denato
Mr. James Van Ginkel

The Sentencing and Post-conviction Subcommittee, with Professor John J. Yeager as drafting consultant, has held two meetings as of this date, and has primarily limited its inquiries to a study of alternatives to the present makeup, practices, and procedures of the Iowa Board of Parole. Representatives of the Iowa correction system have appeared before the Subcommittee for the purpose of expressing their views on this matter. The Subcommittee has, with the cooperation of the Bureau of Adult Corrections, toured the correction institutions at Oakdale, Fort Madison, Anamosa, and Rockwell City for the purpose of becoming familiar with correction programs and procedures.

As the work of the Substantive and Procedure Subcommittees has progressed, the members of both Subcommittees have become increasingly aware of the monumental task which they have undertaken. Deadline dates for the completion of study drafts have not, for the most part, been met. Although the proposed drafts of the Substantive Criminal Law Subcommittee and the Criminal Procedure Subcommittee are in the final stages of preparation, the length of time which will be required before such drafts are finally completed will depend largely upon the number and extent of revisions made by the full Study Committee. Considerable time will also be required for the work of the Criminal Statute Consolidation Subcommittee, which must await final approval of the proposed drafts of the other three subcommittees before it can commence its task. In view of the foregoing, an accurate estimate of the time which will be required before the Criminal Code Review Study Committee has completed its assigned tasks is extremely difficult to determine; however, no reason now exists for revising the Study Committee's earlier forecast that work will be completed in time for the introduction of a comprehensive criminal code revision bill into the second session of the Sixty-fourth General Assembly, which convenes January 12, 1972.