



# MINUTES

## Criminal Code Reorganization Study Committee

October 30, 2007

### MEMBERS PRESENT:

Senator Keith Kreiman, Co-chairperson  
Senator Robert Hogg  
Senator Larry McKibben

Representative Kurt Swaim, Co-chairperson  
Representative Clel Baudler  
Representative Rick Olson

#### Public Members:

Mr. Dave Erickson  
Ms. Jennifer Miller  
Mr. Thomas H. Miller  
The Honorable Michael Mullins  
Mr. Bob Rigg

Ms. Jean Schlichtemeier  
Ms. Pamela Summers  
Prof. James Tomkovicz  
Mr. Clarence Key, Jr. (Executive Director, Iowa Board of Parole) on behalf of Ms. Elizabeth Robinson

## MEETING IN BRIEF

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Organizational staffing provided  
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- I. Procedural Business
- II. Presentation by the Department of Corrections
- III. Code Editor Presentation
- IV. Drug Court Presentation
- V. Iowa Trial Lawyers Presentation
- VI. Additional Committee Discussion
- VII. Next Steps
- VIII. Materials Filed With the Legislative Services Agency



## Criminal Code Reorganization Study Committee

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### I. Procedural Business

**Call to Order.** Co-chairperson Swaim called the second meeting of the Criminal Code Reorganization Study Committee to order at 10:05 a.m. on October 30, 2007.

**Committee Business.** Upon motion, the Committee approved a technical correction to the draft minutes from the September 24, 2007, meeting of the Committee. Subsequently, the Committee approved the minutes as corrected by voice vote.

**Next Meeting.** The third meeting of the Committee is scheduled for June 3, 2008, at 10:00 a.m. in the Supreme Court Chamber (room 103) at the State Capitol.

**Adjournment.** The meeting was adjourned at 4:20 p.m.

### II. Presentation by the Department of Corrections

Mr. Fred Scaletta, Public and Media Relations Director, Department of Corrections (DOC), presented information relating to Iowa's current criminal sentencing structure and also summarized the practical effect of the sentencing laws on criminal offenders committed to DOC. Mr. Scaletta discussed the felony and misdemeanor offense classifications and the corresponding sentencing ranges, mandatory minimum and maximum sentences, and additional sentencing enhancements (special class felony and habitual offender sentences). He stated that Iowa has an indeterminate sentencing structure whereby an offender can earn time to reduce the maximum sentence for their offense. He noted that if an offender is serving a category "A" sentence, the offender will earn 1.2 days for every day of the offender's successful participation in any recommended or assigned work, education, vocation, or treatment program and that an offender serving a category "B" sentence must either serve 70 percent of the offender's sentence (forcible felonies) or 85 percent of the offender's sentence (sexual predatory offenses under Code Chapter 901A) before earned time will be applied to reduce the remainder of the offender's sentence. An offender will earn 1.2 days for every day served in jail prior to entering prison regardless of whether the offender is serving a category "A" sentence or category "B" sentence. Mr. Michael Savala, General Counsel, DOC, commented that DOC can take away earned time if an offender violates any of the 43 disciplinary rules established by DOC and that an offender can also receive earned time that the offender lost back for exemplary behavior.

**Discussion.** Co-chairperson Kreiman asked if rule violations are referred to the local county attorney for prosecution. Mr. Savala responded that if the violation is criminal, then the violation is referred to the local county attorney for prosecution. Committee members also asked questions relating to the methods used by DOC in calculating credit for time served and public awareness of the indeterminate sentencing structure in Iowa — in other words, what assurances does a victim have that a convicted offender will stay in prison? Mr. Scaletta stated the county sheriff certifies the number of days an offender has been confined in jail, and then DOC calculates the credit based upon the sheriff's certification. Mr. Scaletta also responded that DOC does send the victim a letter about the offender but that the victim does not receive updates about the offender's incarceration status. Co-chairperson Kreiman expressed concern that the current law does not do enough to protect victims. Ms. Jennifer Miller stated that prosecutors do explain to the victim that a



10-year sentence does not mean that the offender will actually serve 10 years in prison and that many are surprised to hear that. She noted that many victims don't attend sentencing but they do submit victim impact statements for the court's consideration.

Committee members requested additional information relating to the average term of confinement before an offender is released, the number of sex offenders who refuse treatment, and the average length of time an offender remains on community supervision.

### III. Code Editor Presentation

Ms. Leslie Hickey, Code Editor, Legislative Services Agency (LSA), presented information relating to the last major revision and reorganization of the Criminal Code that occurred in 1976. She also discussed issues relating to the codification process as well as computerization and Code office resources. She also discussed what the Code office has accomplished in making the Code more user friendly over the years and noted that the Code has doubled in size since the last Criminal Code reorganization in 1976. She emphasized that reorganizing the Criminal Code has unique challenges that affect codification, including construing vague criminal statutes against the state (prosecution), prospective application of new or enhanced penalties, retroactive application of reduced penalties, and general savings clauses that preserve the meaning of criminal statutes that are a continuation of old law. She noted that any recodification of current law sets off a chain of modifications and conforming changes that must be made in areas such as administrative rules and state, county, and city prosecutorial practices.

Ms. Hickey urged the Committee to delay the effective date of any proposed legislation reorganizing to the Criminal Code so any potential mistakes or omissions can be corrected prior to implementation, to study all relevant laws to be changed to avoid conflicts and competing interests, and to consider any issues missed in previous Criminal Code revisions. She also emphasized the need for the Committee to solicit an expert in criminal trial procedure and practice to help the Committee with their work.

**Discussion.** Co-chairperson Kreiman reemphasized that one of the Committee's goals is to place all criminal offenses and procedures, if possible, into one volume of the Code. He asked Ms. Hickey for information relating to where all of the criminal provisions are currently located in the Code and stated his desire that Ms. Hickey be involved in the Committee's work as the Committee moves forward.

### IV. Drug Court Presentation

Judges from the Fifth, Sixth, and Eighth judicial districts spoke to the Committee about drug court operations in their judicial districts which are all based on the judicial model.

The Honorable Glenn Pille, District Judge, Fifth Judicial District, stated that drug court is an intensive five phase treatment community-based program that diverts offenders from prison. It takes an offender one and one-half years to complete the program. He noted that clients must have an identifiable substance abuse problem and be able to acknowledge the person has a substance abuse problem which contributed to the criminal conduct. The relevant staff makes the decision on a case-by-case basis as to which offenders meet the eligibility requirements for the



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program. He emphasized that drug court would not work unless the county attorneys, judges, and defense attorneys agree to all work together to help offenders. He also stated offenders in the program agree to forego certain due process rights, thus if an offender violates the rules of the program, the judge has the authority to send the offender to jail immediately. The offender has the right at any time to opt out of the program. This program has been in existence for 10 years and approximately 65 percent of the offenders in the program have graduated.

The Honorable Richard Meadows, District Judge, Eighth Judicial District, identified the following 10 key components of a good drug court: a nonadversarial team approach; integrated substance abuse treatment providers; screening and identification of program participants; a continuum of treatment services; frequent drug testing; coordinated strategies responding to participants' compliance with the requirements of the program; ongoing judicial interaction; collection of data to monitor and evaluate program goals; continued interdisciplinary education; and partnerships with other drug courts, public agencies, and community-based organizations. He stated drug courts are most effective targeting offenders who are drug addicts that become criminals to fuel their drug habit, not criminals who become drug addicts. He stated every offender in his drug court program so far has been to prison at least once and that many of the offenders are not dealing drugs to make money but to support their drug habit. He emphasized the focus of drug court is to try to change bad behaviors and that his program, although rigorous, is not an "in-your-face" type of program. He stated approximately half of the counties in his judicial district are referring offenders to the drug court program as the drug court began in January of 2007 and it is still an ongoing educational process for many of the counties.

The Honorable Fae Hoover-Grinde, District Judge, Sixth Judicial District, emphasized the mental health component of drug court in the Sixth Judicial District, which was only established in the summer of 2007. She also stated that the majority of offenders in drug court in the Sixth Judicial District are addicted to crack cocaine and that offenders participate on a voluntary basis. She stated that the success of the program will be dependent upon continuity and consistency in how the program is administered and that praising good behavior and good choices is very important.

**Discussion.** Committee members posed questions to the panel relating to whether offenders actually benefit from being diverted to drug court as opposed to going to prison, whether the appropriate candidates for drug court are being screened and are accepted into a drug court program, and whether the drug court programs described by all panel members place too much emphasis on a therapeutic approach to an offender's substance abuse problem. Panel members responded that recidivism rates for offenders who participate in drug court are lower than for offenders in the general prison population and that prosecutors and defense attorneys should work together to refer the most appropriate candidates to drug court. They also emphasized the importance of behavior modification and support services throughout the community in changing an offender's self-destructive and risky behavior.

### V. Iowa Trial Lawyers Presentation

Mr. Jake Feuerhelm and Mr. U.J. Booth, criminal defense attorneys representing the Criminal Law Division of the Iowa Trial Lawyers Association (ITLA), asked the Committee to review areas of the Criminal Code relating to robbery, burglary, controlled substances, and driver's license



suspensions. Mr. Feuerhelm stated the ITLA has approximately 75 criminal attorneys from all over the state who can provide input if called upon to aid the Committee in their work. Mr. Booth urged the Committee to review areas of the law where middle ground can be achieved.

### **VI. Additional Committee Discussion**

Additional Committee discussion focused on recommendations and suggestions from the Iowa County Attorney's Association (ICAA) and the Attorney General's Office in revising the Criminal Code. Co-chairperson Kreiman noted that many of the suggestions from the ICAA focus on sentencing reform. Co-chairperson Swaim noted that ICAA submitted 58 very specific recommendations to the Committee. Ms. Miller stated that it makes more sense for the Committee to focus on specific chapters in the Criminal Code starting with revisions to Code Chapter 321 (traffic code), Code Chapter 321J (OWI law), and Code Chapter 124 (controlled substances), rather than revising the entire Criminal Code at one time. Mr. Thomas H. Miller stated that the Criminal Appeals Division of the Attorney General's Office identified a variety of issues they found to be problematic in the Criminal Code including issues relating to definitions and intent language as well as the overall organization of the Criminal Code. Both ICAA and the Attorney General provided documents containing their suggestions and recommendations to the Committee.

Co-chairperson Swaim stated the Committee may decide to deal with sentencing reform issues and suggested one approach might be to establish a commission of sentencing experts to determine how to structure the Criminal Code to better protect citizens given the prison resources currently in place. Professor Tomkovicz suggested the Committee proceed by first establishing a basic foundational makeup in the Criminal Code similar to the Model Penal Code before revising particular crime. He noted the Model Penal Code is divided into five areas to include definitions, basic principles of criminal liability (mens rea, actus rea, and cause), excuse (defense), justification (defense), and inchoate crimes (attempt, conspiracy, and solicitation). He also suggested the Committee establish subcommittees. The Honorable Mullins suggested the Committee examine foundational aspects, reorganizing the Criminal Code for readability, sentencing issues, and specific crimes. Co-chairperson Kreiman agreed it makes sense to begin with a list of basic foundational issues before proceeding to revise specific crimes and sentencing laws.

### **VII. Next Steps**

The Committee agreed to divide future work into four distinct subcommittees. The first subcommittee will review foundational issues such as definitions, culpability, defenses, and inchoate crimes (crimes which lead to other crimes). The second subcommittee will review proposals reorganizing the Criminal Code. The third subcommittee will review sentencing classifications and structures including the establishment of a sentencing commission. The fourth subcommittee will review proposals relating to specific crimes.



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### **VIII. Materials Filed With the Legislative Services Agency**

The following materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the <Additional Information> link on the Committee's Internet web site:

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=211>

1. 10/30/2007 - 5th District Drug Court — Disqualifying Criteria.
2. 10/30/2007 - 5th District Drug Court — Phase Movement Criteria.
3. 10/30/2007 - 5th District Drug Court Stats.
4. 10/30/2007 - 8th District — 10 Key Components of Drug Court.
5. 10/30/2007 - 8th District Outline of 10 Key Components.
6. 10/30/2007 - Comments about the Criminal Code from AG's Office.
7. 10/30/2007 - County Attorneys Association — Proposals.
8. 10/30/2007 - DOC PowerPoint — Criminal Code.
9. 10/30/2007 - Iowa Code Editor — Presentation.
10. 10/30/2007 - Iowa Code Office PowerPoint.
11. 10/30/2007 - ITLA — Handout.
12. 10/30/2007 - Linn County Drug/Treatment Court.
13. 10/30/2007 - LSA Summary of National Correctional Systems.
14. 10/30/2007 - LSA Summary of National Incarceration Rate Rankings.
15. 10/30/2007 - Review of Adult Drug Courts by Beth Lenstra.