



MINUTES

Criminal Code Reorganization Study Committee

May 21, 2009

MEMBERS PRESENT:

Senator Keith Kreiman, Co-chairperson
Senator Pat Ward

Representative Kurt Swaim, Co-chairperson
Representative Clel Baudler

Public Members:

Ms. Jennifer Miller
Mr. Thomas H. Miller
Honorable Michael Mullins
Mr. James Tomkovicz

MEETING IN BRIEF

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Organizational staffing provided
by: Joe McEniry, Senior Legal
Counsel, (515) 281-3189

Minutes prepared by: Rachele
Hjelmaas, Senior Legal Counsel,
(515) 281-8127

- I. Procedural Business
- II. Subcommittee Updates
- III. Legislative Report and Review
- IV. Materials Filed With the Legislative Services Agency



Criminal Code Reorganization Study Committee

I. Procedural Business

Call to Order. Co-chairperson Kreiman called the meeting of the Criminal Code Reorganization Study Committee to order at 11:23 a.m.

Committee Business. Upon motion, the Committee noted a correction to the spelling of Professor Tomkovicz's name in the draft minutes from the January 15, 2009, meeting of the Committee and approved the minutes as corrected.

Next Meeting. The next meeting of the Committee is scheduled for September 9, 2009, at 10:00 a.m. in the Public Meeting Room of the Headquarters for the Department of Public Safety in the Capitol Complex.

Adjournment. The meeting was adjourned at 1:25 p.m.

II. Subcommittee Updates

A. Foundational Provision Subcommittee

Professor Tomkovicz, Chairperson of the Foundational Provision Subcommittee, stated this subcommittee has met four times throughout the 2008 Legislative Interim comparing the foundational provisions in the Iowa Criminal Code with the Model Penal Code foundational provisions. The subcommittee has finalized recommendations to the Committee on the following foundational criminal provisions: acts, mental state, mistake of fact, inchoate crimes, and attempts. In addition, recommendations for intoxication and insanity defenses, as well as additional foundational provisions for diminished capacity, entrapment, duress, self-defense of others, and self-defense of property have not yet been finalized. He stated the "mental state" provisions would have the greatest impact on the Criminal Code and will require the most work.

The "mental state" provisions involve purpose, knowledge, recklessness, and negligence. Revisions to other foundational provisions such as accomplice liability and mistake of fact or law do not involve such a substantial impact on the Criminal Code. He stated that in Iowa there is no general attempt provision but there are over 500 specific crimes in Iowa that criminalize attempt. Mr. Thomas H. Miller, Deputy Attorney General, Criminal Division, Iowa Attorney General, also noted that some offenses, such as traffic offenses, do not involve a "mental state" but are strict liability offenses.

Professor Tomkovicz emphasized the need for this subcommittee and the Specific Crimes Subcommittee to work closely together, especially because of the proposed revisions to the mental state provisions. He also stated that this subcommittee has accomplished 50 percent of the work it needs to do, however, he emphasized he is unable to devote the time and resources necessary to complete the work of this subcommittee this year due to other professional commitments at the University of Iowa Law School.

Co-chairperson Kreiman stated his opinion that the Specific Crimes Subcommittee needs to wait for this subcommittee to complete its work. Mr. Miller expressed his appreciation to Professor



Tomkovicz and the other members of this subcommittee for all their work so far and he also noted that in his view, the purpose of this subcommittee is to clarify the law and it is up to the Specific Crimes Subcommittee to do the specific work relating to revisions to specific crimes.

B. Sentencing Subcommittee

The Honorable Michael Mullins, Chairperson of the Sentencing Subcommittee, reported that this subcommittee agreed to continue to explore the establishment of a Public Safety Advisory Board to regularly review criminal provisions. He suggested examining what other states have done as well as comparing how other boards, committees, and commissions in Iowa are set up and how effective they have been. The Committee discussed the possible duties, membership, and authority of such a board. They agreed that this subcommittee should continue working on this and discussed drafting a specific proposal by early fall to include the charge of the board and how it will be appointed.

Representative Baudler stated that public safety should be the primary consideration of a Public Safety Advisory Board. Judge Mullins stated his belief that the purpose of such a board would be to perform some of the same functions a sentencing commission performs, except that they would operate in an advisory capacity to the Legislature. Such an advisory board should also consider revising criminal sentencing provisions. Professor Tomkovicz agreed and stated that the board should also consider the proportionality, fairness, and economic impact of sentencing laws.

C. Specific Crimes Subcommittee

The Committee urged this subcommittee to begin working on reviewing criminal offenses in the Iowa Code to determine the proper "mental state" provision (purpose, knowledge, recklessness, and negligence) to apply to criminal offenses, utilizing the work so far of the Foundational Provision Subcommittee. Mr. Miller noted that such a discussion should not preclude a discussion of strict liability offenses as well. Co-chairperson Kreiman stated that the purpose of revising the mental state provisions is to provide clarity to the Criminal Code and not to make substantive changes.

Professor Tomkovicz suggested that the Foundational Provision Subcommittee's work so far should provide enough of a basis for this subcommittee to move forward with its work. He noted that the recommendations of the Foundational Provision Subcommittee relating to attempt as well as accomplice liability will require some substantive choices on the part of Committee members. Judge Mullins suggested that in undertaking to apply the mental state provisions recommended by the Foundational Provision Subcommittee to specific crimes in the Criminal Code, the Specific Crimes Subcommittee will also be faced with certain crimes where changes in the definitions would actually make substantive changes in the definition of the crime. He suggested that these types of substantive changes should be reviewed and considered further by the board.

Co-chairperson Swaim asked the Committee for a common consensus to move this subcommittee forward. Committee members agreed that both subcommittees need to work together to bring a



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proposal to the full Committee so the Committee can take a vote on any proposals by the next meeting.

D. Reorganization Subcommittee

The Committee discussed whether this subcommittee should review and reorganize sex offenses to make the prosecution of sex offenses less complicated. The Committee agreed to further discuss this item with Professor Robert Rigg, the Chairperson of the Reorganization Subcommittee.

III. Legislative Report and Review

Mr. Joe McEniry, Senior Legal Counsel, Legislative Services Agency, reported on the status of legislation proposed during the 2009 Legislative Session, as follows:

A. Operating While Intoxicated Nonsubstantive Reorganization Bill – Senate File 431

Senate File 431 passed the Senate and the House Judiciary Committee, but was not acted upon by the House. The bill was rereferred to the House Judiciary Committee and is therefore eligible for consideration in the 2010 Legislative Session. Committee members questioned whether the bill is truly a nonsubstantive correction to the existing law in regard to the reorganization of operating while intoxicated offenses and penalties and Co-chairperson Swaim and Representative Baudler agreed to take a closer look to prepare the bill to move forward during the next legislative session. The bill may need a minor amendment.

B. Criminal Justice Information System Bill – Senate File 285

This bill passed the Senate and the House Judiciary Committee, with amendment, but was not acted upon by the House. The bill was rereferred to the House Judiciary Committee and is therefore eligible for consideration next session. The amendment adopted in committee dealt with implements of husbandry.

C. Sex Offender Registry Bill – Senate File 340

Mr. Ross Loder, Legislative Liaison for the Department of Public Safety, provided an overview of the main provisions of Senate File 340, especially as compared to the law prior to its enactment. Mr. Loder explained the similarities and differences between the legislation and prior law concerning the following areas: offenses requiring registration, registration duration, verification, residency restrictions, exclusionary zones, prohibited employment, modification of requirements to register, and extended jurisdiction of juvenile offenses. In addition, the new law provides for additional reporting requirements.



Mr. Jim Saunders, Assistant Director, Department of Public Safety, and Mr. Joe Motsinger, Special Agent in Charge, Iowa Division of Criminal Investigation (Sex Offender Registry), addressed the Committee regarding steps being taken to implement this legislation. They noted that the Department is coordinating efforts to adopt administrative rules with the Department of Corrections. Criminal history data is also being examined to ascertain what information needs to be provided to affected offenses based on the requirements contained in the new legislation. Each of the 5,000 offenders on the registry will be notified by mail about the new registry requirements and the Department will be holding training sessions with local county sheriffs' offices around the state about the new requirements of the law. Upgrades to the Sex Offender Registry database are almost 90 percent complete and they hope to provide for electronic registration of sex offenders and an upgraded public website with an enhanced mapping capability.

Judge Mullins expressed concern as to what the term "sexually motivated" means within the context of the legislation to guide judicial determination as to whether a particular offender is subject to the new requirements in the law. Professor Tomkovicz noted that any definition should take into account the purpose for the underlying legislation to protect the public from sex offenders. Co-chairperson Kreiman expressed his hope that the various groups involved in this legislation could examine this issue and propose a possible solution.

IV. 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 page:

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

1. Senate File 285 (Criminal Justice Information System (CJIS)).
2. Senate File 340 (Sex Offender Registry).
3. Senate File 431 (Code Section 321J.2 et al Operating While Intoxicated Reorganization).