



# MINUTES

## Criminal Code Reorganization Study Committee

Draft

September 9, 2009

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### MEMBERS PRESENT:

Senator Keith Kreiman, Co-chairperson  
Senator Robert M. Hogg

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

### Public Members:

Mr. David Erickson  
Ms. Jennifer Miller  
Mr. Thomas H. Miller  
Honorable Michael Mullins  
Mr. Clarence Keys (for Elizabeth Robinson)  
Ms. Jean Schlichtemeier  
Ms. Pamela Summers

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## MEETING IN BRIEF

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Organizational staffing provided  
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- I. Procedural Business
- II. Subcommittee Updates
- III. Next Steps
- IV. 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 meeting of the Criminal Code Reorganization Study Committee to order at 10:15 a.m.

**Committee Business.** Upon motion, the Committee approved the May 21, 2009, minutes of the Committee.

**Next Meeting.** The next meeting of the Committee is tentatively scheduled for Thursday, January 14, 2010.

**Adjournment.** The meeting was adjourned at 1:42 p.m.

### **II. Subcommittee Updates**

#### **A. Specific Crimes Subcommittee**

Representative Olson, Chairperson, presented seven proposed statutory changes adopted by the subcommittee to the full Committee for Committee review and discussion. The proposals, Committee discussion, and final Committee action on each proposal are summarized as follows:

1. Creating a new robbery in the third degree criminal offense (nonforcible alternative). Committee discussion focused on how to classify this proposed new offense to accomplish flexibility in charging and plea bargaining options to avoid unintended consequences (such as a shoplifter pushing someone out of the way after shoplifting). The Committee did not reach consensus about how to classify the new offense, but urged Representative Olson and Representative Baudler to continue work on this proposal.
2. Allowing the expungement of an underage possession of alcohol offense in violation of Code Section 123.46 if the defendant has no other criminal offenses other than traffic offenses and the defendant is at least 21 years of age. The Committee adopted this proposal.
3. Providing authority for a judge to extend a defendant's probation period under Code Section 908.11(4) if a violation of probation has been established. The Committee adopted this proposal.
4. Specifying that the definition of contraband under Code Section 719.7 should include both prescription and nonprescription drugs. The Committee agreed this needs further study and deferred this proposal for later discussion.
5. Adding the term "recklessly" to the offense of intimidation with a dangerous weapon (a class "D" felony) in violation of Code Section 708.6. The Committee adopted this proposal.



6. Classifying any escape from custody in violation of Code Section 719.4(2) as a class "D" felony. With one dissent (Ms. Pam Summers), the Committee adopted this proposal.
7. Exempting an assault without intent to inflict serious injury but which results in serious injury in violation of Code Section 708.2(4) from the definition of a forcible felony under Code Section 702.11. The Committee adopted this proposal.

## **B. Sentencing Subcommittee**

The Sentencing Subcommittee recommended the creation of a Public Safety Advisory Board within the Division of Criminal and Juvenile Justice Planning of the Department of Human Rights. The Honorable Michael Mullins, Chairperson of the Sentencing Subcommittee, Co-chairperson Kreiman, and Representative Baudler outlined the recommendations, contained in a bill draft bill prepared by the Legislative Services Agency. The major elements of the bill are as follow:

- The members of the board would be composed of members of the Criminal and Juvenile Justice Planning Advisory Council and any actions taken by the board shall be considered separate and distinct from the council.
- The duties of the board would include analyzing the impact of current and proposed criminal code provisions on disparity, truth in sentencing, victims, proportionality, sentencing procedures, costs, and best practices of the Department of Corrections.
- The board would be required to review the Iowa Child Death Review Team, the Iowa Domestic Abuse Death Review Team, and the collection of correctional data and to provide expertise and advice to the Legislative Fiscal Bureau, the Department of Corrections, the Judicial Branch, and other departments and agencies charged with formulating fiscal, correctional, and minority impact statements.
- The board would be required to report to the Legislative Government Oversight Committee. The board would be required to be politically neutral and gender-balanced.
- The provisions of the draft would not be implemented until sufficient funding has been appropriated to implement the proposed expanded duties of the council and the establishment of the board.

Committee discussion emphasized the importance of utilizing the expertise of the appointed members of the board. The subcommittee recommendation was approved by the full Committee.

## **C. Foundational Provision Subcommittee**

Mr. Thomas H. Miller, Deputy Attorney General, Criminal Division, Iowa Attorney General, presented the recommendations of the Foundational Provision Subcommittee on behalf of Chairperson Tomkovicz who was unable to attend the meeting. The subcommittee recommendations included provisions related to a defendant's state of mind (*mens rea*), the act requirement (*actus reus*), attempt, conspiracy, solicitation, intoxication, insanity, mistake, and liability for others. Mr. Miller noted that many of the proposed changes were modeled after language adopted from the Model Penal Code. He also noted the time and effort the subcommittee spent formulating the recommendations, which included invaluable assistance from Chairperson Tomkovicz's research assistants from the University of Iowa law school.



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Ms. Theresa Wilson, Council Chair of the Criminal Law Section Council of the Iowa Bar Association, presented a report prepared by the council responding to the changes recommended by the subcommittee. The council concluded that the recommended changes should not be adopted because the foundations of Iowa criminal law are generally well understood by practitioners and have proven to be very workable. Such changes incorporating substantial portions of the Model Penal Code terminology would only serve to create significant confusion in the practice of criminal law in Iowa. Although there is a need for better organization and some modifications in the criminal law to provide some clarity, the council sees no need for a complete overhaul of Iowa's Criminal Code. Ms. Wilson also presented changes to the final drafts proposed by the subcommittee should the Committee decide to go forward with the subcommittee's recommendations.

Committee discussion centered around the complexity of the task before both the subcommittee and the full Committee particularly in regard to defining certain terms. Co-chairperson Kreiman reiterated the purpose of the subcommittee is to clarify the Iowa Criminal Code and to provide a framework for consistent application of the criminal law. Mr. Mark Smith, State Appellate Defender, agreed with the need to define certain terms as the basis for different levels of culpability, but commented that it is better to start with the terms that practitioners know already.

Mr. Miller agreed with the majority of the revisions to the subcommittee's recommendations. He commented that the Iowa Bar Association has posed the bigger question about what the purpose of the Committee should be and whether the Committee's work should be as extensive as the revisions undertaken by a similar legislative study committee in 1978.

Representative Baudler stated he had studied and requested experts to review the subcommittee's recommendations. He expressed his concern with moving forward and stated he would vote "no" on the subcommittee's recommendations.

Committee members agreed about the need for additional input and study from various stakeholders in the criminal justice system including the Iowa Bar Association and the Public Defender. The Committee agreed to add a bar association member to the membership of the subcommittee and rereferred the recommendations of the subcommittee back to the subcommittee for further study and review to decide whether a comprehensive review of the Iowa Criminal Code is necessary.

### **D. Reorganization Subcommittee**

Drake Law School students Mr. Scott Watting and Mr. Rico Cordova presented a draft proposal reorganizing the penalty and sentencing provisions of Code Chapter 124 (Controlled Substances). Mr. Watting specifically focused on the draft language placing all of the sentencing options under Code Chapter 124 under one Code section including subsections on enhancements and surcharges.

While Committee members liked the idea of organizing the sentencing provisions under one section, Judge Mullins expressed his concern about the fact that some of the enhancements have to be separately pled and proven and he suggested prosecutors and defense attorneys review this proposal. Mr. Smith expressed concern about practitioners utilizing this Code section if they did



not know beforehand what the penalty was. Co-chairperson Kreiman recommended providing cross references in the penalty provisions to the sentencing provisions.

Committee members agreed the draft needs additional work and did not act upon the draft proposal.

### **III. Next Steps**

Committee members agreed that unresolved issues need further review and recommended scheduling a meeting prior to the beginning of the 2010 Legislative Session.

### **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. Specific Crimes Subcommittee Suggested Statutory Changes.
2. An Act Relating to the Criminal and Juvenile Justice Planning Advisory Council, Establishing a Public Safety Board, and Providing for Implementation – Bill Draft Proposal.
3. Foundational Provision Subcommittee Recommendations.
4. Report of the Criminal Law Section Council of the Iowa State Bar Association – Comments on Proposals of the Foundational Provision Subcommittee.
5. Proposed Code Chapter 124 – Bill Draft Prepared by Drake Law School.