



MINUTES

Criminal Code Reorganization Study Committee

DRAFT MINUTES
Approval Pending

January 14, 2010

MEMBERS PRESENT:

Senator Keith A. Kreiman, Co-chairperson
Senator Pat Ward

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

Public Members:

Ms. Jennifer Miller
Mr. Thomas H. Miller
Honorable Michael Mullins
Mr. Clarence Key, Jr. (for Ms. Elizabeth Robinson)
Ms. Jean Schlichtemeier
Mr. Mark Smith (for Ms. Pamela Summers)

MEETING IN BRIEF

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- I. Procedural Business
- II. Committee Discussion – Proposed Committee Draft Bill Recommendations
- III. Next Steps
- IV. Materials Filed With the Legislative Services Agency



Criminal Code Reorganization Study Committee

I. Procedural Business

Call to Order. The meeting of the Criminal Code Reorganization Study Committee was called to order at 2:08 p.m.

Committee Business. Upon motion, the Committee approved the September 9, 2009, minutes of the Committee.

Adjournment. The meeting was adjourned at 3:09 p.m.

II. Committee Discussion – Proposed Committee Draft Bill Recommendations

A. Sentencing Subcommittee – Public Safety Advisory Board

The materials considered by the Committee are listed in the minutes as attachments with an alphabet designation. The materials can be accessed from the Internet at the URL listed in Part V of these minutes.

The Honorable Michael Mullins, Chairperson of the Sentencing Subcommittee, noted that the bill draft drafted by the Legislative Services Agency (Attachment A) makes changes to the membership and duties of the Criminal and Juvenile Justice Planning Advisory Council and creates the Public Safety Advisory Board to be comprised of members of the council as determined by the council. He stated the duties of the board will be to review and make recommendations relating to current sentencing provisions and to provide a report to the General Assembly about these proposed legislative changes. The changes proposed in this bill draft are contingent upon the receipt of sufficient funding by the Legislature. Judge Mullins noted that most of this funding would be to support staff research. Ms. Lisa Davis-Cook, representing the Iowa Association for Justice, noted the association's approval of the creation of the Public Safety Advisory Council.

The Committee adopted this bill draft recommendation of the Sentencing Subcommittee.

B. Specific Crimes Subcommittee – Bill Draft Recommendations

1. Chairperson Rick Olson reported that the Specific Crimes Subcommittee met again on October 29, 2009, and made the following recommendations in addition to the recommendations already approved by the Subcommittee during the September 2, 2009, meeting:
 - a. Create a robbery in the third degree offense that is a nonforcible class "D" felony.
 - b. Add expungment provisions to Possession of Alcohol Under Legal Age offense in Code Section 123.47 that are similar to existing provisions for Public Intoxication under Code Section 123.46(5).
 - c. Separate the criminal offense of "Simulated Public Intoxication" from "Public Intoxication" in Code Section 123.47(2).



- d. Repeal Code Section 709.7—Detention in a Brothel.
 - e. Move Abuse of a Corpse provisions in Code Section 709.18 (2) and (3) to Code Chapter 714 (Assault).
 - f. Repeal Code Section 321.406—Cowl Lamps.
 - g. Develop a consistent definition for "serious injury" under Code Sections 235B.2, 321.261, 321.482A, 321J.1, 462A.2, and 702.18.
 - h. Develop a consistent definition for "child" throughout the Code.
2. Representative Rick Olson, Chairperson of the Specific Crimes Subcommittee, discussed the following bill draft proposals drafted by the Legislative Services Agency which contain the recommendations of the Specific Crimes Subcommittee (Attachments B-L):
- a. Robbery in the third degree (nonforcible alternative) (Attachment B). Under this proposal, a person commits robbery in the third degree if, while perpetrating a robbery, the person commits a simple assault as defined in Code Section 708.2, Subsection 6, upon another person. The bill proposal classifies this offense as a class "D" felony and exempts this new crime from the definition of a forcible felony, allowing the person to be eligible for a suspended or deferred sentence or a deferred judgment.
 - b. Expunging certain criminal convictions (Attachment C). Under this bill draft proposal, two years after a person's conviction for public intoxication a person may petition the court to expunge the record of the conviction if the person has not had other criminal convictions other than simple misdemeanor violations of Code Chapter 321, relating to motor vehicles and laws of the road, during that two-year period. The bill also establishes a similar expungement provision for possessing, purchasing, or attempting to purchase alcohol under legal age and for similar local ordinances. Committee members expressed concern about the potential for getting more than one expungement.
 - c. Simulated public intoxication (Attachment D). This bill draft proposal transfers the criminal offense of simulated public intoxication in a public place within Code Section 123.46.
 - d. Extension of probation period (Attachment E). This bill draft proposal provides that a judge may extend a period of probation for up to one year including one year beyond the maximum period if a probation violation has been established. The bill also requires the court to inform a defendant at the time of sentencing that the defendant's probation may be extended if a probation violation occurs. Judge Mullins expressed his concern about this latter requirement on the court and stated that this provision may be used in a postconviction relief action if the court fails to inform the defendant. The Committee agreed to strike the section of the bill requiring the court to inform the defendant that the defendant's probation may be extended. The Committee also agreed to make the bill applicable to any crime committed on or after July 1, 2010.



Criminal Code Reorganization Study Committee

- e. Intimidation with a dangerous weapon (Attachment F). This bill draft proposal modifies the elements to prove a class “D” felony offense of intimidation with a dangerous weapon by adding a mens rea component to the offense. Under the bill, a person commits a class “D” felony intimidation with a dangerous weapon if the person “recklessly” performs the actions required to be convicted of such an offense.
- f. Escape or attempted escape from custody (Attachment G). This bill draft proposal equalizes the criminal penalty for all escapes or attempted escapes from custody. A person convicted, charged, or arrested for the commission of any criminal offense who intentionally escapes or attempts to escape from a detention facility, community-based correctional facility, or institution or from the custody of any public officer or employee or anyone else who has custody of the person commits a class “D” felony.
- g. Assault causing serious injury (Attachment H). This bill draft proposal provides that a person who commits an assault without the intent to inflict serious injury but who causes serious injury commits a class “D” felony. The bill exempts this modified assault provision from the definition of a forcible felony under the Code allowing a person convicted of this crime to be eligible to receive a deferred judgment or a suspended or deferred sentence.
- h. Definition of serious injury (Attachment I). This bill draft proposal modifies the definition of “serious injury” in Code Chapters 235B (dependent adult abuse), 321J (operating-while-intoxicated offenses), and 462A (water navigation regulations) and makes this definition consistent with the definitions of “serious injury” in Code Section 708.18 applicable to the Criminal Code.
- i. Cowl lamps (Attachment J). This bill draft proposal repeals Code Section 321.406 limiting the use of cowl lamps on motor vehicles to no more than two such lamps emitting amber or white light without glare.
- j. Detention in a brothel (Attachment K). This bill draft proposal repeals the criminal offense of detention in a brothel. A similar criminal offense already exists in Code Chapter 710A (human trafficking).
- k. Abuse of a corpse (Attachment L). The bill draft proposal transfers certain “abuse of a corpse” provisions from Code Section 709.18 to Code Chapter 708 (assault) and creates new Code Section 708.14 (sexual abuse of a corpse). Mr. Ross Loder, legislative liaison for the Department of Public Safety, addressed the Committee and agreed it is not appropriate to have this provision of the law in Code Chapter 709 (sexual abuse), but suggested the provision be placed in Code Chapter 703 (parties to crime). The Committee agreed to move this proposal as a recommendation from the Committee, but to further study the Code placement of the proposal.

With the exceptions noted, the Committee adopted all of the foregoing bill draft recommendations of the Specific Crimes Subcommittee. The Committee did not take action to develop a consistent definition of “child” throughout the Code.



C. Reorganization Subcommittee – Draft Proposal of Code Chapter 124 Penalty and Sentencing Provisions

Drake Law School students Mr. Scott Wadding and Mr. Rico Cordova discussed their draft proposal (Attachment M) reorganizing the penalty and sentencing provisions of Code Chapter 124 (controlled substances). They noted they cleaned up their earlier draft and noted that Code Section 124.401 was drafted as a self-contained penalty and sentencing provision to aid practitioners. Committee members agreed this proposal is not ready to be introduced for the 2010 Legislative Session and needs more review. They agreed to disseminate this draft version to the various interest groups for their review and comments.

III. Next Steps

Committee members agreed to request to continue this interim committee for one additional year.

IV. Materials Filed With the Legislative Services Agency

The following materials listed were distributed at or in connection with the meeting and by this reference made a part of these minutes. 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. 1/14/2010 – A - Public Safety Advisory Board Bill.
2. 1/14/2010 – B - Robbery in the Third Degree Bill.
3. 1/14/2010 – C - Expunging Convictions Bill.
4. 1/14/2010 – D - Simulated Public Intoxication Bill.
5. 1/14/2010 – E - Extending Probation Bill.
6. 1/14/2010 – F - Intimidation With a Dangerous Weapon Bill.
7. 1/14/2010 – G - Escapes From Custody Bill.
8. 1/14/2010 – H - Assault Causing Serious Injury Bill.
9. 1/14/2010 – I - Serious Injury Bill.
10. 1/14/2010 – J - Cowl Lamps Bill.
11. 1/14/2010 – K - Detention in a Brothel Bill.
12. 1/14/2010 – L - Abuse of a Corpse Bill.
13. 1/14/2010 – M - Draft Proposal of Code Chapter 124 Penalty and Sentencing Provisions.