



# MINUTES

## Criminal Code Reorganization Study Committee

September 24, 2007

First Meeting

### MEMBERS PRESENT:

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

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

### Public Members Present:

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

Ms. Elizabeth Robinson  
Ms. Jean Schlichtemeier  
Ms. Pamela Summers  
Mr. James Tomkovicz

## MEETING IN BRIEF

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- I. Procedural Business
- II. Presentation by the Honorable Michael Mullins,  
Judicial District 8A, Iowa Judicial Branch
- III. Presentation by Paul Stageberg, Administrator of  
the Division of Criminal Juvenile Justice and  
Planning (CJJP), Iowa Department of Human Rights
- IV. Committee Discussion
- V. Next Steps
- VI. Materials Filed With the Legislative Services Agency



## Criminal Code Reorganization Study Committee

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### I. Procedural Business

**Call to Order.** Temporary Co-chairperson Kreiman called the first meeting of the Criminal Code Reorganization Study Committee to order at 10:10 a.m.

**Adjournment.** The meeting was adjourned at 2:58 p.m.

**Committee Business.** The Committee adopted rules. Upon the motion of Representative Hogg, members of the Committee elected temporary Co-chairpersons Kreiman and Swaim as permanent co-chairpersons of the Committee.

**Next Meeting.** The second meeting of the Committee is scheduled for October 30, 2007, in the Supreme Court Consultation Room (Room 102) at the State Capitol at 10:00 a.m.

### II. Presentation by the Honorable Michael Mullins, Judicial District 8A, Iowa Judicial Branch

**Sentencing Chart.** The Honorable Mullins, District Judge, presented his Iowa Criminal Code sentencing chart he has developed over the years to aid prosecutors, defense attorneys, and judges in understanding sentencing mandates and guidelines. He cautioned members that the chart is to be used as a guide and the accuracy of all information should be independently verified by cross-referencing current law. The chart applies to offenses which occur after June 30, 2007, and may not be reliable for offenses which occur before July 1, 2007, or after June 30, 2008. He stated that numerous changes to the Criminal Code over the years have made the Criminal Code much more complex. He emphasized the importance of fully informing a defendant about the minimum and maximum sentence the defendant could receive for any criminal offense during a guilty plea proceeding and that during plea negotiations it is crucial counsel know and understand the sentencing alternatives. This is also important to deter future criminal activity and to instill public confidence.

**Procedural Sentencing Categories.** The Honorable Mullins stated there are three categories involved in any sentencing procedure: (1) requirements (technical, compulsory, necessary, or obligatory), (2) prohibitions (forbidden or unauthorized), and (3) discretion (permissible, allowable, optional, individualized, or selective). He stated his sentencing chart encompasses the three categories of sentencing. He emphasized the current Criminal Code has become extremely complex and his chart is an attempt to help judges, prosecutors, and defense attorneys in understanding the interplay between the numerous applicable Code sections when sentencing a defendant. The categories he created in the chart guide users to consider many sentencing factors such as the appropriate maximum and minimum jail and prison sentences and fines, what sentences can be suspended or deferred, surcharges, victim restitution, substance abuse evaluations and treatment options, license revocations, DNA test, applicability of the sex offender registry, and Department of Human Services benefits.

The Honorable Mullins also presented judgment entry and sentencing forms he developed for use in felony cases except operating while intoxicated (OWI) 3<sup>rd</sup> offenses to promote further uniformity in sentencing. He noted he has developed an OWI sentencing chart for his own use, but he has not distributed it because it is a work in progress.



**Discussion.** In response to Committee members' questions, the Honorable Mullins noted his sentencing chart does not cover simple misdemeanors (with a few exceptions) because simple misdemeanors are difficult to put into a summary chart and magistrates have a handbook they use as a reference source in simple misdemeanor cases. He also noted that his chart does not give guidance to judges and lawyers working in drug court because many offenders in drug court are under some type of deferred prosecution program. Committee members expressed their appreciation to the Honorable Mullins for putting the chart together and agreed it is a good resource for the Committee as they proceed with their work.

### III. Presentation by Paul Stageberg, Administrator of the Division of Criminal Juvenile Justice and Planning (CJJP), Iowa Department of Human Rights

Mr. Stageberg, Administrator, Division of Criminal and Juvenile Justice Planning of the Department of Human Rights (CJJP), briefed the Committee about the role of CJJP established pursuant to Code chapter 216A. He noted that as administrator, he reports to the Criminal and Juvenile Justice Planning Advisory Council, a 22-member group consisting of justice system professionals, public members, and ex officio members. The council and CJJP's juvenile justice activities are also overseen by a juvenile justice council established to keep Iowa in compliance with federal law.

The CJJP is responsible for identifying issues and analyzing the operation and impact of present criminal and juvenile justice policy, making policy recommendations, coordinating data with data resource agencies to provide data to federal, state, and local governments, reporting criminal and juvenile justice system needs to the Governor and General Assembly, providing technical assistance to state and local agencies, administering federal funds and other funds, making grants to cities, counties, and other entities, and maintaining an Iowa correctional policy to conduct analyses of major correctional issues. Mr. Stageberg also noted CJJP regularly prepares criminal justice plans with long-term goals for criminal and juvenile justice programs and maintains an Iowa Statistical Analysis Center for coordinating with other data resource agencies and these databases are available resources to the Committee. In response to the Committee's request, Mr. Stageberg stated that he would provide historical data to the Committee relating to persons, by offense category, who are serving time in prison and persons who are under the supervision of the Department of Corrections (DOC).

### IV. Committee Discussion

**Committee Charge.** Co-chairperson Swaim stated that because of the broad charge of the Committee, Committee discussion at this time should focus on determining the scope and nature of the charge, which can be as broad or as narrow as the Committee decides.

#### Member Comments.

- **Co-chairperson Swaim.** Co-chairperson Swaim noted the difficult and challenging task before the Committee and stated that public safety and the protection of all Iowans should play a major role in the discussion despite limited financial resources. He proposed the Committee take advantage of all available resources including the possibility of grant opportunities to address potential funding issues. He proposed the



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Committee establish a time frame and consider what other states are doing in this area. He also suggested utilizing the Model Penal Code as a drafting guide. He suggested the Committee consider a comprehensive review of the criminal code and consider the following three categories: (1) substantive criminal law including definitions and elements of crime, (2) sentencing issues, and (3) special issues such as the overrepresentation of African-Americans in prison and the 2,000 foot rule for residences of sex offenders. His overall goal is to present a thorough nonpartisan product for the citizens of Iowa.

- **Co-chairperson Kreiman.** Co-chairperson Kreiman suggested the extent of the Committee's charge included the following six categories: (1) rearranging Code chapters and sections for easier readability, (2) eliminating outdated language, (3) substantive Criminal Code revisions to ensure proportionality of the criminal laws, (4) substantive Criminal Code revisions to ensure maximum charging flexibility for prosecutors, (5) procedural Criminal Code revisions, and (6) substantive Criminal Code revisions relating to punishments to promote more effective corrections policies and to increase transitional opportunities for criminals. He also reminded members the Committee has two years to study and submit recommendations to the General Assembly but expressed his concern about completing the work in that time frame and stated his opinion it could be a longer process.
- **Ms. Robinson, Board of Parole.** Ms. Robinson, Chairperson, Board of Parole, stated she is under the impression the Committee's job is to undertake a complete rewrite of the Criminal Code. She agreed that public safety should be a primary concern of the Committee and that the issue of how to best protect the public from sex offenders is an important part of that discussion. She emphasized the importance of public input.
- **Professor Tomkovicz.** Professor Tomkovicz, Law Professor, University of Iowa College of Law, suggested the Committee's task should be a comprehensive review of the Criminal Code and not just a piecemeal response to the concerns expressed by Committee members. Such a comprehensive approach should focus on both substantive criminal law and sentencing revisions. He emphasized that clarity is essential when redrafting the Criminal Code. In addition, public safety and deterrence issues should be an important part of the discussions. He stated the Committee should start with the definitions and then move into the substantive criminal law revisions.
- **Mr. Erickson, Board of Corrections.** Mr. Erickson, member of the Board of Corrections, stated that the prison population in Iowa is currently 22 percent above capacity and there is concern among board members about mandatory minimum sentencing laws which limit judicial discretion in sentencing. He also noted the Committee should study the effectiveness of drug courts and mental health courts.
- **Ms. Schlichtemeier, Department of Corrections.** Ms. Schlichtemeier, Administrative Law Judge, DOC, suggested the Committee should study the proportionality of sentences and the impact of certain sentences on sex offenders and other special needs populations in prison.
- **Deputy Attorney General Miller.** Mr. Miller, Deputy Attorney General, Attorney General's Office, commented that an important goal of the Committee should be to make



Iowa a safer place to live. The discussion should also focus on the best way to allocate resources and should not be limited to substantive Criminal Code revisions. He also suggested the Committee look at what other states are doing to lower recidivism rates including educational, correctional, and treatment options that are available.

- **Representative Olson.** Representative Olson agreed with other members the Committee should balance justice with public safety concerns, should evaluate mandatory minimum sentencing procedures including truth in sentencing laws and the role of prosecutors and judges in sentencing, and should consider placing more definitions in the Criminal Code. He suggested the entire Criminal Code be put into one volume to enhance readability and for ease of reference. He also commented on the need to address drug and mental health issues and to take a hard look at community-based corrections.
- **Professor Rigg.** Professor Rigg, Associate Law Professor, Drake University College of Law, stated that since 27 percent of the prison population in Iowa suffer from severe mental health problems, the Committee should focus on whether the DOC is adequately staffed to address the needs of offenders with mental illness. Deferring an offender with mental illness to a mental health court for appropriate treatment rather than incarceration is one alternative the Committee should consider. He noted Committee members' concerns about the need to protect the public from offenders with mental illness and the lack of alternative treatment resources to effectively deal with this issue.
- **Representative Baudler.** Representative Baudler reemphasized that public safety is the paramount issue when reviewing the Criminal Code. He questioned whether mental health disorders or drug abuse came first. He stated he has been threatened several times by a constituent who has been in and out of institutions 19 times. He also expressed his concerns about people who continue to drive despite the fact that their license has been revoked or suspended.
- **Senator McKibben.** Senator McKibben stated that the Committee should focus first on placing the criminal laws into one section of the Criminal Code to provide a clearer, more concise, and more understandable Criminal Code. He also agreed criminal sentencing has become extremely complex.
- **Ms. Miller, County Attorney.** Ms. Miller, Marshall County Attorney representing the County Attorney's Association, agreed the Criminal Code needs definitions to clarify ambiguities in the criminal laws and should be reorganized into one code volume.
- **Ms. Summers, Public Defender.** Ms. Summers, Assistant Polk County Public Defender, commented on the importance of applying all the criminal laws fairly to all offenders.

**Additional Discussion.** Additional Committee discussion reiterated the need to reorganize the Criminal Code into one volume to provide a clearer, more concise, and more understandable set of criminal laws. Members also discussed examining how other states such as Illinois, Kansas, and Texas have revised their criminal codes and requested Legislative Services Agency staff to complete a summary of what other states are doing to accomplish low incarceration and low recidivism rates. Members discussed comparing Iowa's Criminal Code with the Model Penal Code including penalty provisions, although Professor Tomkovicz noted there are only two sections in



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the Model Penal Code that are relevant to the concerns of the Committee. Members further discussed utilizing additional resources such as the American Law Institute, CJJP, the American Judicature Society, and the Council of State Governments. Members also discussed examining the Uniform Criminal Jury Instructions for guidance. Members agreed judges, county attorneys, and law enforcement should provide input and help the Committee identify inconsistencies and outdated provisions and recommend substantive changes in the Criminal Code.

### **V. Next Steps**

Co-chairperson Kreiman outlined the following items for presentation and discussion at the Committee's next or other future meetings:

1. Presentation summary on how other states have reorganized their criminal codes.
2. Presentation on what other states have done to effectively lower their recidivism and incarceration rates.
3. Presentation comparing the Model Penal Code with the Criminal Code.
4. Presentation by the American Judicature Society.

Co-chairperson Kreiman also requested the professors and public members help lead the discussion and Committee members determine a schedule of review for the Committee.

### **VI. 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 page:

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

1. An Introduction to the Model Penal Code.
2. Crime Chart--The Honorable Mullins.
3. Judgment & Sentence Order by the Honorable Mullins--Basic Felony.
4. Judgment & Sentence Order by the Honorable Mullins--Sex Abuse.
5. Mental Health Courts--Distributed by Dave Erickson.
6. Mental Health Needs of Juvenile Offenders--By NCSL.
7. Prison Population by Offense Class - By CJJP.
8. Professor Rigg E-mail Regarding Criminal Statutes.
9. Criminal Law Overview by Joe McEniry.