

TO: CRIMINAL CODE REORGANIZATION STUDY COMMITTEE

FROM: ICAA

PRIMARY RECOMMENDATION:

In order to understand the enormity of the task of revising the Criminal Code, resolve instead to undertake and complete a revision of only one criminal code chapter before moving to another chapter. Concentrating on one topic will be difficult enough, but would yield better results than taking a "shotgun" approach to the entire criminal code. Suggestions for the first task would be: chapter 321, traffic code; chapter 321J, OWI; or chapter 124, controlled substances.

SPECIFIC CRIMINAL RECOMMENDATIONS:

1. Repeal section 692A.2A, sex offender residency restrictions, enact "safe zones" and preempt local ordinances.
2. Redefine "reckless" in 702.16.
3. Define criminal actual and constructive possession.
4. Revise the sentencing schedule so that all crimes assigned to a specific "class" have consistent provisions. Remove the present inconsistencies.
5. Statutorily determine the lesser included offenses for each crime.
6. Make the majority of traffic violations, as well as DNR violations, civil infractions and reserve criminal sanctions for only the most severe of such offenses.
7. Remove crimes from "regulatory" chapters and convert to civil infractions.
8. Repeal the cowl lamp statute.
9. Amend 701.11 to require admission at trial of defendant's prior acts of sexual abuse.
10. Amend 692A.2 to give juvenile courts discretion regarding sex offender registry and duration of registration.
11. Amend 907.1 to define "expunged" in regard to deferred judgment records and 907.9 to clarify that access to such records is available to all persons set forth in 907.4.
12. Lengthen the speedy trial rule to 180 days for persons not incarcerated.

13. Conform Iowa law to federal law regarding possession of firearms by persons convicted of domestic abuse or who have been committed for a mental illness.
14. Amend 709.1 to make it a crime to perpetrate a sex act by deception.
15. Amend 728.12 to make it illegal to sexually exploit a person "reasonably believed to be a minor."
16. Create the crime of "Forced Sex Act" for an adult to use a position of authority to cause children to engage in a sex act.
17. Target the use of electronic monitoring of sex offenders on parole or work release under new sections 906.4 and 907.6 and by repeal of 692A.4A.
18. Amend 707.2, murder in the first degree, to provide that willful injury which results in death is a class A felony.
19. For juvenile alcohol enforcement under 123.47, allow use of Preliminary Breath Testing devices, create a civil penalty for refusal, and allow admission at trial of PBT results and refusals to test.
20. Amend 147.111, report of treatment of wounds, to include the crimes of homicide or serious injury by motor vehicle as defined in section 707.6A.
21. Amend 123.46, public intoxication, to include intoxication by controlled substances and inhalants.
22. Eliminate the suspension of sentence for an habitual offender under 907.3.
23. Eliminate the simple misdemeanor in 804.20 regarding provision of a phone call to drunk drivers.
24. Revise 155A.24, pharmacy prohibited acts penalties, to clarify the penalties.
25. Eliminate automatic dismissal of juvenile delinquency petition upon commitment for mental illness or retardation under 232.51.
26. Amend 232.116 and 232.102 to allow termination of parental rights when TPR has been ordered for another child in the same family or when such an order has been entered in a court of another state.
27. Make it illegal for an owner or lessee of property to knowingly permit alcohol to be consumed or possessed on their premises by any person under legal age.
28. Prohibit charitable contributions pursuant to 907.13.
29. Make the assessment and amount of a civil penalty for a deferred judgment under 907.14 discretionary.
30. Enact an electronic tracking system for sales of pseudoephedrine.

31. Amend 809.5, disposition of seized property, to remove the requirement of certified mail for property valued under \$500.
32. Amend 728.12 to make each computer image of child pornography a criminal offense.
33. Allow state appeals in sexually violent predator cases.
34. Amend 123.46(5), public intoxication/consumption, to change the term "exonerated" to "expunged" and to prohibit expunging a prior conviction after two years if the person is currently charged under 123.46.
35. Require parental notification for juveniles who are passengers in vehicles driven by persons under legal age in violation of 321J.2 or 321J.2A.
36. Repeal all suspensions of driver's licenses for actions not directly related to traffic safety.
37. Amend 232.8 to exclude from Juvenile Court jurisdiction all vehicular homicide cases involving offenders 16 or 17 years of age.
38. Amend 714.2(2) to provide that theft of a firearm, regardless of value, is second degree theft, a class D felony.
39. Include BB guns, whether CO2 or spring loaded, in the list of dangerous weapons.
40. Amend 708.2, assault, to provide an enhanced penalty of an aggravated misdemeanor for commission of simple or serious misdemeanor assault by a person previously convicted of two or more assaults.
41. Amend 709.9 to increase the penalty from serious to aggravated misdemeanor if the victim of indecent exposure is a child.
42. Enhancement charges should have consistent language: Change chapter 714, theft, section 124.401, possession, and section 123.91, public intoxication, to contain: "Each previous violation on which conviction was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense."
43. Amend 692A.1(5)(n) by striking "subsection 1", in order to clarify that person convicted of enticing away a minor in violation of section 710.10(2) or (3) is required to register as a sex offender.
44. Amend 811.2, conditions of release, to give specific authority for the court to order a defendant to submit to and complete a substance abuse evaluation and complete such treatment as recommended by the evaluation.

45. Amend Rule of Criminal Procedure 10 to require the defense in all indictable cases to file a list and minutes of testimony for all defense witnesses, excluding the defendant.
46. Amend the Post Conviction Procedure Act to permit the attorney appointed to move that the petition be dismissed as frivolous as is permitted by Rule 6.104 of the Rules of Appellate Procedure.
47. Provide authority for assessing the costs of extradition to a person convicted, in the manner of court costs upon certification.
48. Allow enhancement of possession of controlled substance charge under 124.401(5) for prior offenses. Repeal 124.411(3).
49. Amend 124.411(2) to allow the use of deferred judgments as a prior offense.
50. Make the definition of serious injury in 321J.1(a) uniform with the definition in 702.18.
51. Remove the undefined term "personal injury reasonably likely to cause death" in sections 321J.10 and .10A and insert the term "serious injury."
52. Amend 321J.8 to provide (1) that a person whose drivers license is suspended, revoked or barred may not refuse to submit to a chemical test and, (2) a licensed driver who refuses a chemical test is guilty of a serious misdemeanor.
53. Amend 321J.8 to allow cross examination of a defendant regarding a prior OWI conviction on the issue of refusal to submit to chemical testing in the present case.
54. Amend 321J.21 to remove references to "suspended, denied, or barred" which are terms inconsistent with Chapter 321J.
55. Amend 809.1 to allow seizure of evidence in Chapter 321 violations, except in scheduled violations.
56. Consolidate within one chapter all violations for driving while suspended, revoked, barred or without a license.
57. Amend 321.279(2) and (3) to include reckless driving as a predicate in order to increase the penalty in eluding cases.
58. Amend 321.277, reckless driving, to allow jury consideration of the status of a person's drivers license or operating privilege in determining "willful disregard of the consequences."