

REPORT OF THE

CRIMINAL CODE REVIEW STUDY COMMITTEE

Submitted to the Iowa Legislative Council
and the Members of the
Second Session of the Sixty-fourth General Assembly

R E P O R T

CRIMINAL CODE REVIEW STUDY COMMITTEE

December 15, 1971

COMMITTEE MEMBERSHIP

The current membership of the Criminal Code Review Study Committee is as follows:

Representative Robert M. Kreamer, Chairman
Senator Gene W. Glenn, Vice Chairman
Senator Quentin V. Anderson
Senator R. Dean Arbuckle
Senator Lee H. Gaudineer, Jr.
Senator Ralph W. Potter
Senator Harold A. Thordsen
Representative Norman G. Jesse
Representative Michael K. Kennedy
Representative George J. Knoke
Representative Charles H. Pelton
The Honorable James P. Denato
The Honorable Ira Morrison
Professor Ronald L. Carlson
Professor John J. Yeager
Mr. David J. Dutton
Mr. John Callahan
Mr. James Van Ginkle
Mr. Charles Vanderbur

Senate Joint Resolution 18, Acts of the Sixty-third General Assembly, First Session, created the Iowa Criminal Code Review Study Committee in 1969. That Resolution directed the Study Committee created pursuant to its provisions to prepare and submit a report of its recommendations to the members of the Sixty-fourth General Assembly, accompanied by legislative bill drafts designed to carry out those recommendations.

Although every conceivable effort has been made by the Criminal Code Review Study Committee and its subcommittees to complete the project within the time period mandated by the Resolution, it does not appear that those efforts will be successful. A comprehensive review of all aspects of Iowa's criminal justice system has proved to be a project of far greater scope and magnitude than anticipated by those persons responsible for creation of this study. Recent experience in other states has indicated that revision of the substantive portions of a criminal code only may require three or more years. Iowa is one of the few states, if not the only state, which has endeavored to comprehensively revise not only its substantive and sentencing laws, but also its criminal procedure laws.

The possibility of submitting a final report, along with such recommendations and bill drafts as the Study Committee has reviewed and approved to date, was discussed. It was the collective decision of Study Committee members that such action would be inappropriate and would not fulfill the obligation of the Study Committee. Study Committee members also feel that exposure to and scrutiny by the public is necessary to the successful enactment of any legislative proposal of this magnitude. Such exposure would not be possible if a final report and recommendations were made at this time. It is for these reasons that the members of the Criminal Code Review Study Committee respectfully request an additional one-year period, until January, 1973, for completion of the revision project. It is anticipated that the Study Committee will have completed its review and have approved all subcommittee drafts by July of 1973, and that the remainder of the interim period can be devoted to an orderly dissemination of the completed draft among interested persons and groups, and to the final alterations and revisions of the draft which will no doubt be necessary.

Application has already been made, through the Iowa Crime Commission, for an additional \$50,000 in federal funds for use through January 1, 1973.

SUMMARY OF SUBCOMMITTEE ACTIVITIES

A. Substantive Criminal Law Subcommittee.

The Substantive Criminal Law Subcommittee held its only meeting of the 1971-72 legislative interim on July 9. The meeting was called for the purpose of preparing the fourth tentative draft of the Subcommittee for submission to and review by the full Study Committee. This purpose was accomplished and the Subcommittee, having fulfilled its obligations, has terminated its activity.

B. Criminal Procedure Subcommittee.

The current membership of the Criminal Procedure Subcommittee is as follows:

Senator Quentin V. Anderson, Co-Chairman
Representative Norman G. Jesse, Co-Chairman
Senator Ralph W. Potter
Representative Charles H. Pelton
Representative George J. Knoke
Judge James P. Denato
Judge Ira Morrison
Mr. David Dutton

The Subcommittee's drafting consultant is Professor Ronald L. Carlson.

The Criminal Procedure Subcommittee has held four meetings during the 1971-72 legislative interim, three of which have been two-day meetings.

The large bulk of the Subcommittee's work has involved a detailed review of Professor Carlson's preliminary criminal procedure draft. The 156 page draft is divided by subject matter into 22 divisions, one of which contains 50 rules of criminal procedure. Professor Carlson established a procedure for review of the draft whereby a specific portion was assigned to a "reader", whose expertise would permit him to provide good discussion leadership as well as make constructive suggestions for revision. The discussion leaders included Judge William Eads, Judge Ira Morrison, Judge James P. Denato, Judge Forest Eastman, Mr. David Dutton, Black Hawk County Attorney, and Mr. Frederick G. White, Waterloo Attorney.

The Criminal Procedure Subcommittee has completed its review and revisions of the preliminary draft, and Professor Carlson is currently in the process of compiling a revised draft incorporating amendments made by the Subcommittee. It is anticipated that the draft will be completed for review by the full Study Committee by the end of December, 1971. Professor Carlson is also compiling a comprehensive set of revisers notes which, when completed, may be used by the legislature as well as the courts in determining the reasons and authority for particular sections in the procedure draft. It is anticipated that the revisers notes will be completed shortly after completion of the revised procedure draft.

C. Sentencing and Post-Conviction Subcommittee

The current membership of the Sentencing and Post-Conviction Subcommittee is as follows:

Senator Harold A. Thordsen, Chairman
Senator R. Dean Arbuckle
Senator Lee H. Gaudineer, Jr.
Representative Norman C. Jesse
Representative Robert M. Kreamer
Representative Michael K. Kennedy
Judge James P. Denato
Mr. James Van Ginkle
Mr. John Callahan

The Subcommittee's drafting consultant is Professor John J. Yeager.

The Sentencing and Post-Conviction Subcommittee has held six meetings during the 1971-72 legislative interim, and will meet at least once more prior to the convening of the General Assembly in January.

The Sentencing and Post-Conviction Subcommittee was fortunate in obtaining the advice and counsel of two recognized sentencing experts before a meeting of the full Study Committee in August. Those experts were Mr. Sol Rubin, Chief Counsel for the National Council on Crime and Delinquency, and Professor Peter Low, Assistant Dean, University of Virginia Law School. Another meeting of the full Study Committee was held on November 19 for the purpose

of guiding the Sentencing Subcommittee in determining the appropriate sentencing approach. Representatives of the Iowa Criminal Justice System were invited to attend and comment upon the second tentative draft regarding sentencing and post-conviction procedure. The exchange of ideas and information at both of these meetings has been extremely beneficial to Professor Yeager and Subcommittee members in attempting to determine which of many alternative sentencing approaches should be adopted for use in Iowa.

A revision of the second tentative draft regarding sentencing and post-conviction procedures is currently being performed. The Subcommittee is particularly anxious that the sentencing law ultimately recommended to the legislature be based upon and accurately reflect the sound thinking of informed and knowledgeable individuals in this complex and controversial area of the law. The Subcommittee hopes to be able to submit its proposed draft for review by the full Study Committee early in the next legislative interim.

D. Consolidation and Coordination Subcommittee

The Consolidation and Coordination Subcommittee, which will be responsible for putting the draft together in a cohesive and consistent package, has not yet been appointed, but will begin its activity immediately after completion and approval of the substantive, procedure, and sentencing drafts.

SUMMARY OF ACTIVITIES OF FULL STUDY COMMITTEE

The Criminal Code Review Study Committee has held twelve meetings during the 1971-72 legislative interim. The meetings have been primarily devoted to detailed review of the fourth tentative draft of the Substantive Criminal Law Subcommittee. This draft, inclusive of comments, contains 124 pages and is comprised of 27 chapters. The Study Committee has thus far reviewed, amended, and approved the first fifteen chapters of the draft. Chapters 16 through 27 of the draft appear to be much less controversial than chapters 1 through 15, and it is anticipated that the Study Committee will have completed its review by the end of this legislative interim. Professor Yeager, the Substantive Subcommittee draftsman, will then proceed with the final draft of the Substantive Criminal Code.

Copies of the tentative substantive, procedure, and sentencing drafts have not been attached to this report for reasons of economy, however, such copies are available in limited number and will be furnished upon request of the Legislative Council if this is considered desirable.