CRIMINAL CODE REVIEW STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
First Session of the Sixty-fifth General Assembly

REPORT

CRIMINAL CODE REVIEW STUDY COMMITTEE

Senate Joint Resolution 18, Acts of the Sixty-third General Assembly, First Session, called for the creation of a study committee to conduct a comprehensive study of the Iowa criminal code in order to provide a workable and effective system of criminal justice. Pursuant to that resolution the Legislative Council created the Criminal Code Review Study Committee during the 1969 interim. Although the resolution called for submission of the Study Committee's report and recommendations to the members of the Sixty-fourth General Assembly, the magnitude of the task rendered this intent impossible, and the final work product of the Committee will be submitted in its entirety to the General Assembly in January 1973.

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 Gene V. Kennedy
Senator Ralph W. Potter
Senator Harold A. Thordsen
Representative Norman G. Jesse
Representative Luvern W. Kehe
Representative George J. Knoke
Representative James I. Middleswart
Representative Charles H. Pelton
Judge James P. Denato
Judge Ira Morrison
Professor Ronald L. Carlson
Professor John J. Yeager
Mr. John Callaghan
Mr. Kermit Dunahoo
Mr. Ray Fenton
Mr. Frank J. Karpan
Mr. John J. Quinn
Mr. Stanley R. Simpson

The Study Committee has completed its work, and preparation of the proposed criminal code in bill form will be completed by the Legislative Service Bureau. At its final meeting, the Committee decided unanimously to submit the criminal code revision bill to the General Assembly upon its preparation, and to recommend its passage.

Summary of Subcommittee Activity

Both the Substantive Subcommittee and the Procedure Subcommittee completed their deliberations during the 1971 interim, and their respective drafts were submitted to the full Study

Committee for consideration at that time. The Sentencing and Post-Conviction Subcommittee held one meeting on June 15 during the 1972 interim for the purpose of finalizing its work product and to approve its submission to the full Study Committee. The membership of this subcommittee was as follows:

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

Professor John J. Yeager was the draftsman for the Sentencing and Post-Conviction Subcommittee. Its purpose having been fulfilled, this Subcommittee terminated its activity after its June meeting.

The original plans of the Study Committee called for the appointment of a consolidation subcommittee after the three drafts had been given final approval. The ostensible purpose was to coordinate terminology and internal references, to eliminate duplication among the three drafts, and to determine any issues relative to necessary coordinating amendments to other portions of the present Code. It was found that most of these problems were worked out by the full Committee as it progressed through the drafts during final review. However, some policy decisions regarding amendment of the many criminal penalties contained in other portions of the Code remain. Accordingly, a three-member Subcommittee was appointed to review these sections and to make the necessary recommendations. Its members were:

Senator R. Dean Arbuckle
Representative George J. Knoke
Professor John J. Yeager

The Subcommittee held two meetings on December 7 and 14, 1972 and submitted its work product to the full Study Committee. It was subsequently approved at the final meeting of the Study Committee on December 15.

Summary of Activities of Full Study Committee
Consideration of Substantive Criminal Law

The Criminal Code Review Study Committee has held twenty meetings during the 1972-73 legislative interim. The first nine meetings of the Committee were devoted to consideration and final approval of the remaining portions of the substantive draft. This work was completed on September 8 and the final version of the draft consists of twenty-eight divisions. It includes as much of the Iowa substantive criminal law as is feasible to place in one chapter and is organized to insure easy accessibility for the layman as well as those trained in the law. Every attempt was made

to simplify and modernize language so as to clarify exactly what is intended in a particular section consonant with the Committee's desire to retain established judicial interpretations of terminology wherever this is desirable. The retention of known terms was attempted whenever there was no desire on the part of the Committee to alter the law in that regard.

In certain instances a majority of Committee members felt that judicial construction differed substantially from the plain meaning of present statutes, and the Committee made every effort to conform the terminology to the precise meaning desired. In other cases code language has been rendered meaningless by judicial decision and it was altered or deleted as the Committee thought required. The best example of this is the present requirement of malice aforethought in criminal homicide. The Committee determined that this phrase as construed by judicial decision amounted to nothing more than that the act was done intentionally, and the statute was accordingly recast in those terms.

It should be noted that many of the changes and language modernizations suggested by the Committee will run against the grain of many members of the bar and of the general public who are used to the peculiarities and idiosyncracies of the current code. It is hoped that these objections will diminish as the work of the Committee is more widely publicized and discussed.

The first portion of the substantive draft is devoted to a general outline of the scope and application of the entire substantive law. This is followed by a comprehensive set of definitions which it is hoped will lead to a standardized application of judicial interpretation to all portions of the criminal law. All of the offenses prescribed by the code are given a classification which in turn determines the penalty attached to that offense. Felonies are classified as class A, B, C, or D, and misdemeanors are classified as aggravated, serious or simple. The penalties attached to each classification are set out in the Sentencing and Post-Conviction Procedures draft. It is hoped that this will result in a more equitable allocation of penalties to crimes both within the code itself and as applied in courts throughout the state.

After the section by section consideration of the substantive portion of the code was completed on September 8, two later meetings were devoted to final requests for reconsideration by Committee members. The policy of the Committee throughout its deliberations has been to allow unlimited discussion of any matter in the purview of the Committee's responsibility and to freely allow the reopening of any issues previously determined by the Committee. Majority vote of those present at a particular meeting was liberally employed to decide controversial questions.

Sentencing and Post-Conviction Procedures

Final review of the Sentencing and Post-Conviction Procedures portion of the code began on September 8, 1972 and was substantially completed on October 6, 1972. The sentencing draft

consists of nine divisions arranged as far as possible to follow the sentencing process through conviction, sentence, probation, parole and parole violations. Mr. Nolan Ellandson, Director of the Bureau of Adult Correction Services of the Department of Social Services, was able to attend many of the deliberations on this draft and often gave valuable information and assistance regarding proper procedural details both as to present practice and changes that have been advocated.

No major alterations in the structure of the state's parole and probation apparatus is included in the draft. However, every attempt was made to update parole and probation procedures to conform with recent Supreme Court decisions. The draft clearly delineates the sentencing procedure to be employed by judges, and it is felt that the goal of more uniform application of sentences throughout the state can be achieved without sacrificing the flexibility necessary in dealing with individual defendants.

Criminal Procedure Draft

Final review of the Criminal Procedure portion of the draft began on October 20, 1972 and was completed on December 15. The Procedure draft is divided into twenty-four separate divisions and represents a revision of forty-seven chapters of the Iowa Code, a total of six hundred ninety-eight Code sections. The first portion of the draft deals with the arrest, commencement of criminal actions, and evidence gathering phases of the procedure. The trial of the case is then governed by the Iowa Rules of Criminal Procedure, all contained as part of division thirteen of the draft. It is felt that a comprehensive set of rules governing criminal trials is most advantageous in achieving uniformity of criminal justice throughout the state.

The remaining divisions of the draft concern appeals, costs and such other miscellaneous matters as double jeopardy and extradition procedures. The Procedure draft, as well as the Substantive and Sentencing and Post-Conviction drafts, all are believed to embody the principle that the rules governing the criminal law process should be located in one place in the Code, should be readable and understandable by laymen, judges, and lawyers alike and should reflect current societal standards and thinking as regards prohibited conduct and the fair and equitable treatment of its violators.