

CLEAR Initiative

Criminal Law Edit, Alignment and Reform

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SENATE BILL 100

CODE OF CORRECTIONS REALIGNMENT TO CLEAR THE PATH FOR CRIMINAL SENTENCING

The Illinois Code of Corrections ("Code") defines the punishment and/or alternative treatment of criminal offenders. Over the years, countless well-intentioned changes have made the Code disorganized and difficult to use, at times leading to confusion and costly litigation of sentences. As courts have interpreted the law, some provisions of the Code have been rendered moot or clarified in a way that is not obvious from reading the existing Code. The Code should be accurate, well-organized and easy to use and understand.

Senate Bill 100, the sentencing reform bill recommended by the CLEAR Commission, accomplishes these goals. With House Amendment 1, Senate Bill 100 incorporates legislative alterations to the Code since Senate Bill 100 was approved unanimously by the Senate in 2007, and it updates the language with additional technical and clarifying changes.

BENEFITS OF A LESS COMPLEX SENTENCING CODE

- The Code will be easier to navigate and understand.
- Judges will be able to impose sentences with more confidence that they are appropriate and will not be overturned on appeal.
- There will be fewer legal disputes that result in costly new sentencing hearings, court delays and mistakes.
- In the future, policy makers will more easily understand the implications of proposed amendments.

HOW THE PROCESS WORKED

The review of criminal sentencing laws was done by the CLEAR Commission, which includes respected policy makers and practitioners representing diverse perspectives on the criminal justice system, as well as the geographic, racial and economic composition of the state. The Commission looked at the current sentencing structure and the numerous statutes that extend or enhance sentences, as well as those that create alternatives to incarceration. Sentencing factors that were applicable to an offense classification, such as the term of years or availability of probation, were brought into a standard sentencing article so that these factors are in one location. In some cases, specialized factors that constitute narrow exceptions to the standard provisions were left in a specific statute. All Commission decisions were made by consensus and required the approval of all members, the same process that was used in the CLEAR Commission rewrite of the Criminal Code.

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EXAMPLES OF CHANGES PROPOSED BY THE CLEAR COMMISSION

LOGICAL ORGANIZATION

Many of the sentencing provisions within the Code are lengthy and repetitive with little logical order. The CLEAR sentencing reform bill reorganizes statutes logically, making it easier to locate the applicable provisions. The bill places the most often used provisions at the beginning of the Code, grouped according to criminal sentencing, procedure, juveniles, and finally, administration of the Department of Corrections. All of the miscellaneous Acts currently in Chapter 730 are put into one Act. This allows the entire Chapter to be organized coherently and consistently, with the generally applicable definitions placed in one location instead of throughout the Code.

Finally, a new article entitled "Standard Sentencing" is proposed. This article will house all information that is generally applicable to all offenses. This will reduce the number of places a reader must look within the Code to find the applicable sentencing laws. A reader will only need to look to the underlying offense and to this proposed article to learn the pertinent information.

The extended term sentencing factors are reorganized to make them easier to understand. Currently, there is no logical order to how they are presented. Some factors relate to all felonies in the Code while others relate to specific felonies. The CLEAR sentencing reform bill places the generally applicable factors together and the offense-specific factors together. It also consolidates overlapping factors.

CODIFICATION OF CASE LAW

The current Code fails to reflect well-settled case law so readers cannot be certain that the Code reflects the current state of the law. For example, Section 5-5-3, Disposition, currently states that probation, periodic imprisonment, or conditional discharge shall not be imposed for a Class 2 or greater felony if the defendant had been convicted of a Class 2 or greater felony within ten years. The provision is ambiguous as to whether a federal conviction or a conviction in another state would trigger this section, although courts have made it clear that these non-Illinois convictions should trigger this provision. Thus, the CLEAR sentencing reform bill clearly states that any state or federal conviction applies.

In another example, Section 5-5-3.2(b) contains the aggravating factors that trigger extended term sentencing, including the factor that the defendant acted with exceptionally brutal or heinous behavior, indicative of wanton cruelty. The Illinois Supreme Court has held that this factor cannot apply to the offense of Concealment of a Homicidal Death, but this limitation is not in the Code of Corrections so a reader would not know it exists without performing further research. The CLEAR sentencing reform bill amends Section 5-5-3.2 to reflect the Supreme Court interpretation of the provision.