

CLEAR Initiative

Criminal Law Edit, Alignment and Reform

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COMPREHENSIVE REFORM OF THE ILLINOIS CRIMINAL CODE

Since the Illinois Criminal Code was last overhauled by the General Assembly more than 48 years ago, thousands of well-intentioned changes have riddled the Criminal Code with redundancies, inconsistencies and confusing language. A Code that once made clear distinctions between right and wrong and concisely explained the penalty for each transgression now confounds even experienced lawyers and judges in the Illinois criminal justice system.

The General Assembly has an opportunity in this spring session to establish a new Criminal Code that is less complex, easier to comprehend and includes the same crimes and punishments enacted by past legislatures. This new Criminal Code is the result of four years of deliberations of the CLEAR Commission – a group of prominent criminal justice system participants convened to fix the broken Code.

BENEFITS OF LESS COMPLEX ILLINOIS CRIMINAL CODE

- The Code will be more accessible to laypeople trying to obey the law.
- Judges and lawyers will find the Code easier to understand and apply.
- The reform will eliminate disputes over interpretation of the Code that can reduce costly retrials, court delays and mistakes.
- The size of the Code will be reduced significantly, and indexing will be improved.
- Policy makers will more easily understand the implications of amendments proposed in the future.
- The new Code will limit the opportunity for lengthy and expensive appeals due to confusion with the existing Code.

HOW THE REVIEW PROCESS WORKED

The CLEAR Commission 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. Co-chaired by former Governor James R. Thompson and former Illinois Appellate Court Justice Gino L. DiVito, the Commission detailed on the left includes members appointed by the four legislative leaders, as well as prosecutors, defense attorneys, judges, law enforcement representatives, the Attorney General and a representative of the Governor's office.

The Commission met quarterly to discuss recommended changes, hear alternatives and refine draft language. Over the past four years, every line of the more than 300,000-word Code was reviewed. Replacement language and reorganization will reduce the size of the Code by about one-third.

All Commission decisions were made by consensus, done in consideration of political concerns and required the approval of all members. There are no significant or problematic substantive changes which would raise "soft on crime" concerns. It is similar to the comprehensive death penalty reform legislation enacted in 2004 – necessary reform, making Illinois a model for the nation.

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EXAMPLES OF CHANGES PROPOSED BY THE CLEAR COMMISSION

CONSTITUTIONAL ISSUES

The current Code contains numerous provisions that have been struck down as unconstitutional. The CLEAR Commission recommends repeal or correction of those provisions.

For example, the Intimidation statute, subsection 12-6(a)(3), addresses intimidating another by threatening to commit a "criminal offense." That language has been held unconstitutional as vague, overbroad and a violation of the First Amendment. To avoid that constitutional problem and restore the General Assembly's original intent, the Commission changed that subsection to clarify that intimidation occurs when someone threatens to commit "a felony or a Class A misdemeanor."

Another example is the current Code's inclusion of "mandatory presumptions," which require the judge or jury to presume guilt for some crimes based on circumstantial evidence. Although the Illinois Supreme Court has found mandatory presumptions to be unconstitutional, the language still exists in some 30 state statutes. The Commission recommends deleting those unconstitutional provisions and replacing them with "permissive inferences," a change that preserves the original legislative intent but does not violate a defendant's right to due process. Unlike mandatory presumptions, permissive inferences allow, but do not mandate, a judge or jury to determine a crime has been committed based on some circumstance present when that crime occurs. Criminal statutes at the federal level and in most other states contain permissive inferences.

LANGUAGE CONFUSION

Confusion caused by misspellings, duplicate words, nonsensical language and archaic terms is eliminated. Many statutes contain archaic language that is no longer in common use. For example, terms like "wickedly," "officiously," "intermedial" and many others not defined or no longer in common use are scattered throughout the present Code. The proposed legislation removes and updates these problematic areas.

STREAMLINING

Several major articles and sections of the Code are reorganized and streamlined. Redundancies and inconsistencies are removed, and articles begin with a definitions section followed by a streamlined substantive offense section.

LOGICAL ORGANIZATION

The revised Code creates a logical structure of similar offenses. For example, the offenses of hazing, child endangerment and contributing to the delinquency of a juvenile are relocated to a new "Harms to Children and Students" article. The article includes many offenses once scattered throughout the current Code that address only harms to children and students. Placing them in a single article will make it easier for practitioners and laypeople to locate like offenses.