

Criminal Code Revisions and the Codification Process in Iowa

- Criminal Code Reorganization Study Committee's charge:
Consider proposals for Criminal Code revisions, reorganization, and updates.
- Last major Criminal Code revision was in 1976.
- Codification since then mostly amendments or additions.

Codification

- Codification is the process of compiling enactments containing general and permanent law systematically organizing the permanent law by subject matter, without changing meaning of the law.
- A "good" code is organized in logical and systemic manner so that law is easy to determine and find.
- Objective: provide notice of and access to current law to the citizens in a timely manner.
- Is ministerial process, not policy oriented.

Changes to Codification in Iowa

- Chapter and section numbers are part of legislative enactments.
- Authorization given to the Iowa Code Editor to compile and move and divide or combine portions of the law if the meaning and effect of the law is not altered (Code sec. 2B.13).
- The Iowa Code is computerized.
- Size of Iowa Code has doubled.

Reorganization of Criminal Law Provisions through Transfer

- o An older example of the discretionary placement of new Code sections in an already existing Code chapter includes a footnote to Code sec. 600.1 which sets out the "best interest of the child" standard for adoptions. The footnote provides, as a qualification on the statement that the chapter shall be construed liberally, that the chapter as originally enacted only included secs. 600.1 to 600.16, Code 1977, and therefore implies that the new Code sections added to the chapter subsequently may not be governed by the "best interest of the child" standard.

Organization of Iowa Code

- History of Code and major enactments—in Appendix.
- Last major Code reorganization was in 1993.
- Current organization of permanent law in Iowa involves the following groupings, among others:
 - Grouping by subject matter titles and subtitles, and chapters and sections, e.g., public health, transportation, and criminal law and procedure.
 - Grouping by legal entity having jurisdiction over subject matters, e.g., the Department of Public Health or the Board of Pharmacy, the Department of Transportation, and county attorneys and the criminal courts.
 - Grouping by legal remedy available, such as administrative, civil, and criminal penalties and procedures.

1993 Editorial Reorganization of Iowa Code

- In 1993, approximately 15 percent of Iowa Code chapters were transferred by the Iowa Code Editor, as the result of a multiyear project involving the Iowa State Bar Association. Special care was taken to affect as few as possible criminal law provisions because of the difficulty of assuring that the transfer of criminal law provisions would not in some way affect the elements of the crimes or any associated criminal law procedures. The challenges and difficulties encountered in this transfer included the following:
 - o Numerous references were inserted in various chapters in the Code stating that certain Code chapter provisions were not enacted as part of the Code title, subtitle, or chapter. Code chapter 135 provides that its definitions apply for the purposes of Code chapter 155 and Title IV, subtitle 2, excluding Code chapters 142B, 145B, and 146, because these Code chapters were not enacted as part of that subtitle.
 - o Code chapter 904, establishing the Department of Corrections, contains a footnote which states that terms within that Code chapter may need to be construed in accordance with Code sec. 218.95.

Current Iowa Code Organization

- One result of these groupings is that administrative, civil, and criminal law are generally combined together into 16 titles based on subject matter and not type or types of available remedy.
- Code chapter 124 is an example of a subject matter grouping (controlled substances regulation and remedies) where major administrative and criminal law remedies are combined with regulatory provisions affecting manufacturers and distributors.
- Code chapter 904 (Corrections Department) is an example of subject matter transferred from one location (chapter 246) to current subject matter area of Criminal Law and Procedure.

Examples of Current Criminal Code Provisions that Raise Problematical Issues of Code Placement

- Criminal law provisions are contained throughout most titles of the Code, including felony, misdemeanor, and scheduled violation classifications.

Criminal Law Principles Relevant to Codification

- Because of the deprivation of liberty that attends convictions for violating the criminal law, the following statutory construction rules apply:
 - ✓ Criminal law provisions are construed against the state.
 - ✓ Enhanced penalties are applied prospectively to newly committed offenses.
 - ✓ Reduced penalties are applied retroactively.
 - ✓ General savings clause applies to preserve those criminal law provisions in any new enactment that is a continuation of old law.

Other Consideration Relevant to Criminal Law Revision

- Legal challenges to the applicability and construction of criminal law provisions to individual defendants are inherent to the process.
- Any revisions, especially comprehensive revisions to criminal law provisions, even if presented meticulously in well-drafted legislation passed by the General Assembly and approved by the Governor, will possibly have errors.
- Assigning any codification or reorganization tasks affecting the substance of the criminal law to the Iowa Code Editor is likely to be challenged as an illegal delegation of law-making authority to the Iowa Code Editor.

Reorganization of Criminal Law Provisions through Transfer

- The transfer of Code provisions through instructions to the Iowa Code Editor in enacted legislation is relatively rare and even if done meticulously most often leaves important codifications questions unanswered, some of which may result in questions as to the substance of the permanent law after transfer.

Other Consequences of Major or Comprehensive Changes to the Code

- Major permanent law changes, whether criminal or not, are often followed by additional "clean-up" legislation to remedy unintended consequences, to provide more detail, or to link related law in an appropriate manner.
- In order to accommodate this "clean-up" activity, the effective date of major permanent law changes are often delayed by up to one or two years. For example, the 1976 regular session Criminal Code revisions were not made effective until January 1, 1978. Major "clean-up" legislation was passed in 1977 and in 1978 even after the Criminal Code revisions went into effect.

Other Consequences of Major or Comprehensive Changes to the Criminal Law in the Code

- Effective date delays for major permanent law changes, especially those that might affect numerous titles throughout the Code, also allow the General Assembly and drafters of legislation the opportunity to contemplate how other new enactments will interact with the major permanent law changes, and thus provide for a more accurate and thorough codification of all new laws. If major permanent law changes are made effective July 1 or even upon enactment, little opportunity is given to the General Assembly and drafters to harmonize the major changes with other changes made during that legislative session. The result is often that some provisions cannot be harmonized and legislative intent in the enactment of multiple laws cannot be given immediate effect through codification. Often the General Assembly will need to revisit these policymaking issues in the subsequent legislative session. Lack of gubernatorial approval of all of or portions of the enactments also complicate this codification process.

Reorganization of Criminal Law Provisions through Transfer

- Questions regarding a possible transfer of some Code chapter 124 (controlled substances) provisions might include issues relating to federal uniformity, definitions applicability, splitting of regulatory and criminal provision, and splitting of criminal provisions applicable to illegal users versus legal manufacturers and distributors handling controlled substances in a criminal manner.

Examples of Current Criminal Code Provisions that Raise Problematical Issues of Code Placement

- Code chapter 321, the motor vehicle code, contains felony, misdemeanor, and scheduled violation provisions. Code sec. 321.482 provides that any violation of the chapter not otherwise classified is a simple misdemeanor. However, Code chapter 805 classifies tens or perhaps hundreds of Code chapter 321 violations as scheduled violations without any statement in the specific Code chapter 321 provisions that Code chapter 805 penalties apply rather than the default simple misdemeanor penalty in Code sec. 321.482. In order to assist Code readers, the Iowa Code Editor has inserted many internal reference footnotes below the Code chapter 321 sections to which a scheduled violation penalty applies.

Examples of Current Criminal Code Provisions that Raise Problematical Issues of Code Placement

- Title XVI, the criminal law and procedure title, begins with Code chapter 687 and ends with Code chapter 915. The Criminal Code includes Code chapters 701 through 728 but excludes Code chapters before 701 relating to crime control and excludes Code chapters after 728 relating to hate crimes and employer-employee offenses. The code of criminal procedure includes Code chapters 801 through 819 but excludes Code chapters after 819 relating to extradition, postconviction procedures, and judgment and sentencing (Code chapters 819A-822, 901-903B, and 907). Simply broadening these criminal law and criminal procedure codes to include these related chapters is not a ministerial task and could have serious substantive consequences.

Other Consequences of Major or Comprehensive Changes to the Criminal Law in the Code

- Any recodification of current criminal law sets off a chain of modifications downstream, such as:
 - Administrative rule modifications.
 - State, county, and city prosecutorial practice changes.
 - Defense practice changes.
 - State civil regulatory changes tied to criminal provisions.

Computerization and Codification

- While current computer programs assist in codification, the process of codification is still largely a manual task rather than an automated task. The computer programs for codification are almost 25 years old.
- The Legislative Services Agency (LSA) has begun a multiyear project to place all permanent law in a relational database and to identify all elements of the permanent law with both content and format tags, using nonproprietary, open software to assure indefinite use of these major database and tagging efforts.
- By 2009 or 2010 LSA should be capable of tagging criminal law elements of the Code with specialized identifiers, making searching and display of various types of criminal law provisions possible. Depending on the sophistication of the tagging, this new capacity could serve to reduce the desirability of transferring some criminal law provisions by offering alternative search and display functionalities without having to address the substantive consequences of moving these criminal law provisions in the Code.

Recommendations

- Delay effective date of any changes
- Make all revisions in legislative enactment
- Carefully study laws to be changed to avoid problems and competing interests
- Consider issues missed in previous Criminal Code rewrite and subsequent legislative enactments