



Legislative
Research
Council

MINUTES

Criminal Code Revision Commission

Second Meeting
2004 Interim
Thursday and Friday, July 29-30, 2004

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

The second meeting of the interim Criminal Code Revision Commission was called to order by Senator Lee Schoenbeck, Chair, at 8:00 a.m. on Thursday, July 29, 2004, in Legislative Conference Rooms 1 and 2 of the State Capitol Building in Pierre, South Dakota.

A quorum was established with the following members present: Senators Patricia de Hueck and Lee Schoenbeck (Chair); Representatives Joni Cutler, Richard Engels, Thomas Hennies (Vice-Chair), Sean O'Brien, and Tim Rounds; Messrs. Jeff Larson, Charlie McGuigan, Robert A. Miller, Dave Nelson, and Tim Tucker. Unable to attend the meeting were Senator Gil Koetzle, Representative Tim Rave, and Mr. Mike Butler.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Annie Mehlhaff, Principal Fiscal Analyst; Jacquelyn Storm, Principal Legislative Attorney; and Kris Schneider, Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council. For the purpose of continuity, these minutes are not necessarily in chronological order.

Minutes

COMMISSIONER ENGELS MOVED, SECONDED BY COMMISSIONER CUTLER, TO AMEND PAGE 4, PARAGRAPH 5 OF THE JUNE 16, 2004, MINUTES TO READ, "*Commissioner Engels commented that the judges are not the only ones confused by driver license suspension laws, so are attorneys. They would also like to see changes made to those statutes. He stated that the civil penalties on drug offenses are rarely levied. He would like to know if civil penalties are consistent across the board and if they are enforced and make sense. Iowa has an additional misdemeanor category called "gross misdemeanor" that is roughly equivalent to our class 6 felony. Perhaps we could add that category and use it for repeat misdemeanor offenses and some current Class 6 felonies.*" MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER ROUNDS, THAT THE MINUTES OF THE JUNE 16, 2004, MEETING BE APPROVED AS AMENDED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Chair Remarks

Chair Schoenbeck suggested that any commission members who might be available meet at 7:00 p.m. this evening to review the correspondence received to date. He stated that the subcommittee meetings would be meeting as committees of the whole and there would be no minutes taken nor

would the meetings be broadcast over the internet. Any subcommittee recommendations will have to come back to the full committee for action.

Staff Remarks

Mr. Bezpaletz distributed additional correspondence (**Documents 1 & 2**) and asked the commission to place them behind Tab 2 in the notebook (Item No. 8 & 9, pages 41-46). A memo dated July 22, 2004, from Professor Chris Hutton was also distributed for placement behind Tab 7 (**Document 3**). Additional correspondence was distributed to the commission later in the day (**Documents 4, 5, 6, 7, and 8**) and were placed behind Tab 2 in the notebook (Item No. 10 -14, pages 47 - 71). Staff assignments for the subcommittees were as follows: Ms. Mehlhaff and Ms. Storm will be working with Commissioner Hennies' group and Mr. Bezpaletz will be working with Commissioner Cutler's group.

The commission recessed at 8:15 a.m. to break into subcommittees.

Friday, July 30, 2004

The commission reconvened at 8:00 a.m. on Friday, July 30, 2004, in Legislative Conference Rooms 1 and 2, with the same members and staff in attendance.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER ROUNDS, TO AMEND THE AGENDA AS FOLLOWS: THE COMMISSION BREAKS INTO SUBCOMMITTEES PRIOR TO 8:30 A.M. AND RECONVENES AS A FULL COMMISSION AT 11:00 A.M. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Additional Chair Remarks

Chair Schoenbeck stated that the worthwhile ideas gleaned from all of the correspondence received was assigned to the subcommittees after discussion last night. He stated that he foresees that the subcommittee work will substantially be completed at the next meeting with regard to Title 22 and Drugs and Alcohol. Assignments will be made shortly regarding Tab 6 (Felonies Not Located in Title 22). Public testimony will be scheduled for the fourth meeting, which was set for September 30 and October 1.

The commission recessed at 8:05 a.m. to break into subcommittees.

The commission reconvened at 11:00 a.m.

Subcommittee Reports

Commissioner Cutler, Chair of the Title 22 subcommittee, reported that the subcommittee has over 140 years of combined experience in the criminal justice area. Thirteen subject areas have been reviewed thus far. The subcommittee plans on finishing up with homicide and suicide at the August meeting. Prior to the August meeting, staff will be providing additional information for their workbook, along with some additional research on several topics. She stated that the subcommittee reviewed the correspondence and will have about fifty-five draft proposals for the full commission's consideration. Items that the subcommittee dealt with were repealing several sections in the statutes that are redundant, creating consistency in definitions throughout the statutes, creating definitions for specific intent crimes, making changes to the arson and kidnapping statutes, creating a section in the

theft statutes relating to theft by check and theft by forgery, changing the monetary amounts used to judge misdemeanor and felony theft, and adding a new category of aggravated theft.

Commissioner Hennies, Chair of the Drug and Alcohol subcommittee, reported that his subcommittee had dealt with the DUI statutes. The subcommittee's recommendation will include repealing some statutes regarding revocation of driver's licenses, eliminating the majority of the mandatory minimum sentences, clarifying definitions, eliminating provisions of the implied consent statutes, repealing all of the alcohol statutes attached to boating and replacing them with a section similar to that provided for driving snowmobiles, and adding "ingesting" to the extracurricular activity ban. Prior to the next meeting, Commissioner Nelson will be developing a matrix that shows the drug charged and the sentence that goes with it. Commissioner Tucker will compile a report on revocations and suspensions. Commissioner O'Brien will check into the suspension of extracurricular activities when convicted of drug offenses to see how often it is invoked. Commissioner Rounds will report on license revocations and how federal funds are attached to them.

Representative Chris Madsen spoke to the subcommittee regarding implied consent. Mr. Bob Newland spoke to the subcommittee as an advocate for decriminalizing marijuana. Mr. Mike Gray, author of *Drug Crazy*, spoke about the prohibition of drugs and alcohol and various studies from around the world. Mr. Matthew Ducheneaux spoke regarding his medical use of marijuana and the criminal charges brought against him.

Additional Chair Remarks

Chair Schoenbeck stated that Commissioner Tucker will work with Professor Chris Hutton on "lesser inclusions" prior to the next meeting. Commissioner Miller will visit with the Unified Judicial System on the "no driver license" and "no insurance" issues. In the next few weeks, staff will be sending out draft legislation, the rest of the Title 22 workbook, and the Tab 6 information.

Chair Schoenbeck stated that at the end of the interim he would like the commission to include in their report to the Executive Board the reasons why statutes were amended or moved, similar to the Supreme Court comments.

Next Meeting Dates

Chair Schoenbeck set the third meeting for 8:00 a.m. on Tuesday and Wednesday, August 24 and 25. The fourth meeting was set for Thursday and Friday, September 30 and October 1.

Adjournment

There being no further business, Chair Schoenbeck adjourned the meeting at 11:30 a.m.

