



MINUTES

Criminal Code Revision Commission

Fourth Meeting
2004 Interim
Thursday and Friday, September 30 - October 1, 2004

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

The fourth meeting of the interim Criminal Code Revision Commission was called to order by Representative Thomas Hennies, Vice-Chair, at 8:00 a.m. on Thursday, September 30, 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 answering roll call: Senator Patricia de Hueck; Representatives Joni Cutler, Richard Engels, Thomas Hennies (Vice-Chair), Tim Rave, and Tim Rounds; Messrs. Mike Butler, Jeff Larson, Charlie McGuigan, Robert A. Miller, Dave Nelson, and Tim Tucker. Present following roll call were: Senator Lee Schoenbeck (Chair) and Representative Sean O'Brien. Unable to attend the meeting was Senator Gil Koetzle.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Annie Mehlhaff, Principal Fiscal Analyst; 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 ROUNDS MOVED, SECONDED BY COMMISSIONER CUTLER, THAT THE MINUTES OF THE AUGUST 24-25, 2004, MEETING BE APPROVED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Vice-Chair/Subcommittee Chair Remarks

Vice-Chair Hennies explained that Chair Schoenbeck would be arriving shortly. Subcommittee Chair Hennies stated that at 10:30 a.m. Attorney General Larry Long would be speaking via telephone to his subcommittee on the Tab 6 felonies and at 1:00 p.m. Commissioner Otto Doll would be speaking on internet crimes.

Staff Remarks

Mr. Bezpaletz distributed five additional pieces of draft legislation (**Documents 1, 2, 3, 4, & 5**, pages 149 - 166) and asked the commission to place them in the Draft Legislation binder that had been previously mailed. Additional correspondence was distributed to the commission later in the meeting (**Documents 6, 7, 8, & 9**) for placement behind Tab 2 (Items No. 22, 23, 24, & 25, pages 86-95). A proposed draft letter to those persons who have provided written comments to the commission was distributed for the commission's input (**Document 10**). He asked members who had received e-mail comments to provide staff with mailing addresses. Mr. Bezpaletz also distributed a handout prepared by the Attorney General's office entitled "Sex Offender Registration Websites" (**Document 11**).

Roundtable Discussions of Full Commission Issues

Lesser Included - Commissioner Tucker spoke regarding "lesser included" for rape, sexual contact, drug offenses, and homicides. He stated that most of the "lesser included" work well. The drug offense lesser included could be improved through judicial training. He stated that a problem with drug offenses is a person can distribute drugs without ever possessing them. As far as homicides, he proposed making changes so the standard test that courts use would also work for homicides (**Document 12**).

Commissioner Larson stated that the proposed change to homicide would be helpful; however, there is also a need to address the issue that negating language not be an element. He was also concerned with aggravated assault and simple assault.

Commissioner Hennies stated that he did not believe there should be a "lesser included" on the rape charges.

Commissioner Cutler stated that her subcommittee would look at the "lesser included" for assaults.

Penalty Schedule - Mr. Bezpaletz explained two pieces of draft legislation (Douglas and Edmunds, pages 75 and 77). He stated that the Douglas draft (Felony Schedule) did not have consensual support in the subcommittee whereas the Edmunds draft (Aggravated Misdemeanor) did. Commissioner Miller stated that he had requested the drafting of Deuel (page 63) which would add a Class C felony.

Deuel Draft

COMMISSIONER MILLER MOVED, SECONDED BY COMMISSIONER MCGUIGAN, THAT DEUEL (Page 63) BE AMENDED SO THAT A CLASS 1 FELONY IS 50 YEARS IMPRISONMENT RATHER THAN LIFE IMPRISONMENT AND DOUBLING ALL OF THE FINES THAT ARE CURRENTLY PROVIDED AND THAT DEUEL BE ADOPTED AS AMENDED.

COMMISSIONER ENGELS MOVED A MOTION TO AMEND THE AMENDMENT, SECONDED BY COMMISSIONER NELSON, TO ADD "A FINE OF FIFTY THOUSAND DOLLARS MAY BE IMPOSED" ON THE CLASS A, B AND C FELONIES ALSO. MOTION TO AMEND PREVAILED ON A VOICE VOTE. MOTION TO ADOPT DEUEL AS AMENDED PREVAILED ON A VOICE VOTE.

Edmunds Draft

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER ENGELS, THAT ON LINE 8, AFTER FINE "OR BOTH" BE ADDED. MOTION PREVAILED ON A VOICE VOTE.

COMMISSIONER MILLER MOVED, SECONDED BY COMMISSIONER NELSON, TO ADOPT EDMUNDS AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

Protection Orders - Commissioner Cutler explained the three different ways a person may be granted a protection order. She stated that SDCL 22-19A's penalty part is confusing and should be cleaned up. Clarification is needed for what the penalty is when a protection order is violated. Also, the enforcement of foreign protection orders only applies to SDCL 25-10 (domestic relations) and not to

stalking. A suggestion was made to create SDCL 25-10A to deal with protection order violations. Chair Schoenbeck assigned a subcommittee of Commissioners Cutler, Engels, and Tucker to work on the protection order issues.

Federal Sex Registry Requirements - **Ms. Pat Archer**, Assistant Attorney General, reviewed and distributed a memo dated September 30, 2004, (**Document 13**) which provided additional information on the requirements of the federal Jacob Wetterling Act (42 U.S.C. §14071). Following a brief discussion, Chair Schoenbeck assigned a subcommittee of Commissioners Cutler, de Hueck, and O'Brien to put together draft legislation on the sex registry requirements.

Federal Gun Ownership Restrictions - Commissioner McGuigan reviewed and distributed a memo dated September 7, 2004, (**Document 14**) which explained the differences between South Dakota laws and federal requirements with regard to firearms. He stated that South Dakota does not have a provision to grant relief to persons who have been convicted of misdemeanor crimes of domestic violence; thus those persons are forever barred from possessing a firearm under federal law. Chair Schoenbeck assigned a subcommittee of Commissioners Butler, McGuigan and himself to draft legislation regarding gun ownership restrictions consistent with the federal exceptions.

Felonies Outside of Title 22 (Tab 6) - Attorney General Larry Long appeared telephonically to discuss the Tab 6 felonies and his letter dated September 28, 2004, to Commissioner Hennies (**Document 15**). He gave a comparison of the Tab 6 felonies and all felony convictions in South Dakota courts from FY 99 through FY 03. He stated that the Tab 6 felonies are almost never prosecuted except for the following six categories: tax violations, DUI 3 and 4, failure to appear, child abuse, eluding police, and hit and run. The most frequently committed felony crimes are DUI, possession of a controlled substance, grand theft, forgery, aggravated assault, and 3rd degree burglary. He suggested that there was little need for the commission to make substantive changes to the Tab 6 felonies. He commented that SDCL 37-17-1 should be amended so that the property value is consistent with other offenses.

Habitual Offender Statutes - Commissioner Larson distributed an Alternative to Lincoln (**Document 16**). He explained the current habitual offender statutes. He stated that Lincoln (page 161) would mandate life imprisonment if one of the priors was a violent crime. Commissioner McGuigan explained Lincoln, an alternative method of applying the habitual offender statutes.

COMMISSIONER ENGELS MOVED, SECONDED BY COMMISSIONER TUCKER, TO ADOPT THE ALTERNATIVE TO LINCOLN. COMMISSIONER MCGUIGAN MOVED A SUBSTITUTE MOTION, SECONDED BY COMMISSIONER NELSON, TO ADOPT LINCOLN. SUBSTITUTE MOTION FAILED ON A VOICE VOTE. ORIGINAL MOTION PREVAILED ON A VOICE VOTE.

The commission recessed at 11:01 a.m. to break into subcommittees.

Friday, October 1, 2004

The commission reconvened at 11:15 a.m. on Friday, October 1, 2004, in Legislative Conference Rooms 1 and 2 with the same members present except Commissioners Butler and O'Brien, who were excused.

Next Meeting Date

Chair Schoenbeck stated that the fourth and final meeting was scheduled for Tuesday and Wednesday, November 30 and December 1. He asked all members to read the drafts and look through the correspondence prior to the next meeting. He set October 22 as a deadline for the subcommittees to have their drafts to LRC so that the preliminary polished drafts could be posted on LRC's Web site on or about October 29.

In response to a question on how the public will be informed that the draft legislation is available, Chair Schoenbeck stated a letter was sent to persons who had written correspondence to the commission and that a letter would be sent to the State Bar Association. Staff was asked to get the word out to the media, either by a press release or through the Governor's updates. He stated that if members had a particular group or an individual they wished to be informed, to please let staff know.

Adjournment

There being no further business, Chair Schoenbeck adjourned the meeting at 11:23 a.m.



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