

Criminal Justice Improvement Committee
Code Improvement Project

The History of the Current Code

- The current Delaware Criminal Code was developed beginning in 1967, in direct response to the American Law Institute publishing its landmark Model Penal Code in 1962.
- Enacted in 1973, the original Criminal Code was short, clean, and comprehensive—a dramatic improvement over the law it replaced. In the years since then, hundreds of new crimes have been added and the code has been expanded from less than 95 pages as originally enacted, to over 407 pages today with little attention to the general effects of the change on the criminal code’s overall structure, its terminology, or its application. As a result, the current criminal code has numerous inconsistencies, redundancies, ambiguities, and contradictions. But the expansion has not improved public safety.
- The current Delaware Criminal Code has not been reviewed in a rational, systemic way since its adoption over 40 years ago.

History of the Code Improvement Project (legislative charge):

- In 2014, the General Assembly in the FY 2015 Budget Act (SB 255) adopted epilogue language establishing the Criminal Justice Improvement Committee (CJIC). The epilogue set out the CJIC’s agenda as follows:
 - “The Committee shall review opportunities for efficiencies in the criminal justice system, including but not limited to the following areas:
 - Statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
 - Crimes that should or should not constitute potential jail time; . . .”
- Similar epilogue language setting forth the CJIC’s mandate was included in the FY 2016 Budget Act (HB 225), the FY 2017 Budget Act (SB 285) and then again in the FY 2018 Budget Act (HS 1 for HB 275).
- After the Epilogue was reauthorized in 2015, this Code Improvement Project was initiated under the CJIC as a comprehensive response to its mandate.

Code Review Process

- Consistent with longstanding Delaware tradition, the General Assembly named criminal justice stakeholders from all three branches of government to the CJIC. The CJIC stakeholders agreed to support the General Assembly and the Executive Branch in accomplishing the objectives set by the epilogue language—rationalize and improve the fairness, reduce inconsistencies and redundancies in, and increase the understandability of Delaware’s Criminal Code. The review process has been transparent and inclusive, involving numerous opportunities for lengthy and comprehensive review and discussion.

2015 - 2016

- At the November 17, 2015 kick-off meeting for the CJIC, the committee members discussed the CJIC’s agenda as specified in the budget epilogue. Working with Professor Paul Robinson (a leading criminal justice scholar from the University of Pennsylvania School of Law), they began to develop an approach to support the

Committee's mandate regarding code review. The Committee agreed to review a sampling of Professor Robinson's work in early 2016.

- A small drafting group was convened to assist Professor Robinson with the code review (the "Working Group").
- On January 21, 2016, the Working Group presented its work to the members of the CJIC and answered questions about this approach and the process. The CJIC agreed that the group should continue its work and provide updates to the Committee.
- At the request of the Chair of the CJIC, the Working Group provided an update about the project to the Joint Finance Committee on June 8, 2016.
- The Working Group met with representatives from victims' rights advocacy organizations on August 30, 2016 to discuss the project and address any concerns.
- The project was discussed with members of the Access to Justice Fairness Committee in the summer of 2016.

2017

- Throughout the summer and fall of 2016 and into 2017, the Working Group continued to meet and work on a Preliminary Report, including the Proposed Code Text and commentary. Early drafts were widely circulated for comment and changes were made to address concerns. Members of the Working Group met multiple times to discuss the draft with interested groups, such as victims' advocacy groups, law enforcement, members of the public, and others.
- On January 10, 2017 a member of the Working Group, Judge Ferris W. Wharton, presented to the Council of Police Chiefs to discuss the improved code.
- On March 8, 2017, the Working Group met again with Victims' Advocates to discuss the draft of the code. In response to their comments, the code text was amended in several significant ways.
- On March 16, 2017, the CJIC held a meeting to review the project. On March 21, 2017 the Working Group completed its initial work and provided a Preliminary Report containing the Proposed Code Text to the CJIC and the public for discussion. The Preliminary Report was posted on the CJIC website <https://legis.delaware.gov/Committee/JointFinance/CJIC-Report> for all to review. The purpose of the Preliminary Report was to surface issues for public discussion and to solicit comment to ensure the process was as transparent as possible. In response to feedback from the public, the Working Group revised the Preliminary Report three times during this period. Each revised version of the report was posted online.
- Public hearings were then held to solicit additional comments and feedback. The first public hearing took place in Newark on April 3, 2017 at the University of Delaware, the second on April 10, 2017 at Delaware State University and the third on April 13, 2017 at the University of Delaware's Virden Retreat Center in Lewes. Written comments were also accepted online from those who could not attend the hearings or wanted to supplement their remarks at the hearings.
- The written comments from the public hearings were collected and shared with the full CJIC and the Working Group.
- In late spring 2017 and following the public hearings, the Attorney General agreed to review the draft Preliminary Report and provide written feedback. In addition, a number of follow-up meetings were held with the Attorney General and his staff to discuss the Proposed Code Text and additional changes were made to the Preliminary Report as a result. Discussions also took place about how to incorporate a proposal

by the Attorney General to simplify and reform Delaware's criminal drug laws into the Proposed Code Text.

- In late spring 2017, the Attorney General produced a preliminary response to the Proposed Code Text with a number of comments. The Working Group carefully considered these comments and made a number of changes to the Code as a result. The Attorney General then submitted his final comments on the Proposed Code in mid-November 2017. As was done before, the Working Group carefully considered those comments and the following is a list of some of the more significant changes to the Proposed Code Text:
 - I.C. §§ 1003 (Manslaughter) and 602 (Authorized Terms of Imprisonment): these sections were amended to provide for a minimum mandatory sentence of 2 years and a maximum sentence of 25 years for the crime of Manslaughter, in keeping with current law.
 - I.C. § 1025 (Operating a Vehicle While Under the Influence of Drugs or Alcohol or “DUI”): this section was amended in keeping with current law that escalates the penalty for recidivist behaviors so that:
 - DUI 1st regraded as Class A misdemeanor punishable up to 1 year in prison;
 - DUI 3rd regraded as a Class 9 felony punishable up to 2 years in prison; and
 - DUI 4th regraded as a Class 7 felony punishable up to 8 years in prison
 - DUI 5th regraded as a Class 6 felony punishable up to 15 years.
 - I.C. § 1404 (Possessing or Purchasing a Deadly Weapon by Persons Prohibited): this section was amended to address the concern that it is graded too low and fails to have a minimum/mandatory sentence for someone illegally in possession of a firearm due to a prior felony conviction:
 - Regraded Possession of a Deadly Weapon by a Person Prohibited (PDWBPP) to new Class 5 with 2-year minimum\mandatory and a maximum sentence of 25 years if possessed weapon is a firearm and an element of the felony for which person was previously convicted includes causing physical injury, sexual conduct or use of a deadly weapon.
 - I.C. § 1022 (Assault with a Deadly Weapon): this section was amended to address the concern that it was graded too low:
 - Assault with a deadly weapon causing physical injury regraded as a Class 7 felony with maximum punishment of 8 years.
 - Assault with deadly weapon causing serious physical injury regraded to a Class 5 felony with 2-25 years in prison.
 - I.C. Chapter 14, Subchapter II (Drug and Related Offenses): the Working Group revised this Chapter to incorporate many aspects of the Attorney General's drug bill, SB 34, introduced in the 149th General Assembly (2017):
 - Reduction of the number of drug “Tiers” from 5 to 3.

- Removal of all aggravating factors besides school zones.
 - Reduction of number of offenses to which the school zone aggravator applies.
 - Shifting the location and quantity of prescription drugs among the “Tiers,” for greater equity.
 - I.C. Section 604 (General Adjustments to Offense Grade): The Working Group revised the definition of Vulnerable Adult to include senior citizens, without the requirement of any additional impairment.
 - I.C. Section 1023 (Reckless Injuring): The Working Group revised this section to include as an upward grade adjustment if the victim is law enforcement, first responder or any state employee discharging their duty of employment (e.g. DOC).
- Several members of the Working Group met again during the summer of 2017 with police chiefs, police union heads and their attorneys to discuss the Improved Code. The Improved Code was amended in accordance with their concerns as follows:
 - I.C. § 304 (Law Enforcement Authority Use of Force): this section was amended to clarify that a law enforcement officer has immunity from criminal prosecution so long as he acts without criminal negligence or recklessness. The Commentary was also amended to reflect there is no intent to impose stricter liability on law enforcement officer than is currently law.
 - I.C. § 205(b)(4) (Culpability Requirements/Negligently): this section was amended to insert “Criminal Negligence” in place of “Negligence” in keeping with current law.
- A follow-up meeting with victims’ advocates was held November 17, 2017. The changes previously made to the Code text in response to the victims’ advocates concerns were reviewed, and additional comments were received for review by the Working Group. More amendments to the Code were made in response to the advocates’ concerns as follows:
 - I.C. § 1041(f) (Rape and Sexual Assault, No Defense for Mistake as to Age Under 14): this section was amended to restore strict liability for victims aged 16 and under in keeping with current law.
 - I.C. § 1022 (Assault): this section was amended to restore Strangulation as its own offense, distinct from Assault, so that strangulation is punished as a Class 8 felony with up to 8 years, instead of as a Class A misdemeanor for simple assault.
 - I.C. § 1303 (Stalking/Harassment): this section was amended to reflect concerns that Stalking is a distinct offense with its own criminal state of mind.: Section 1303 (a)(2) was added to capture unique culpability of Stalking. Stalking was given its own offense definition within the section rather than couching as a grade of Harassment.

2018

- On February 9, 2018 members of the Working Group again met with police union representatives to discuss sections in the Improved Code dealing with the use of force by police officers and additional changes were made to address their concerns.

- On February 13, 2018 members of the Working Group again met with the Delaware Police Chiefs Council at their regular meeting in Dover to discuss the Improved Code. The Improved Code Section 1101 (Theft) was amended based on their concern and the amount for felony theft was restored to current level \$1,500.00.
- On March 6, 2018, the Republican caucuses were briefed on the Improved Code.
- SB 209 (the Improved Code Bill) and SB 210 (a companion bill that makes changes to other parts of the code as a consequence of changes made by the Improved Code, called ‘the Conforming Amendments Bill’) were released in May. The *only difference* between SB 209 and the Final Report on March 16, 2018 are *formatting* changes made at the request of Legislative Counsel – no substantive changes were made.
- After more than two years of work, three public hearings, and countless meetings with various criminal justice constituents – creating an inclusive super-process – a difficult decision was made to put SB 209 and SB 210 on hold. Despite the extensive outreach efforts, it was decided that several additional months would allow for those who had yet fully engaged in the process to do so and insure inclusiveness.
- After the bills were temporarily withdrawn in June 2018, more comments on the bills were solicited from state agencies, victims’ groups and child advocates. As a result of these discussions, additional changes were made to the bills.
- New bills will be introduced for consideration by the 150th General Assembly in 2019.
- When the improved Delaware Criminal Code is again submitted as legislation, as with the 2018 legislation, it will go through the regular legislative process—including committee hearings and requiring approval of the House and Senate and finally the signature of the Governor.
- When the legislation and conforming amendments are released, there will also be a lengthy Commentary. This is a revised version of Volume 2 of the report to the CJIC. The Commentary details how each section of the Improved Delaware Criminal Code relates to the existing code provisions and identifies changes to the existing Criminal Code and the reasons behind the change.

What does the Improved Code accomplish?

- Focus is on improving the Code by reducing redundancies, improving fairness and proportionality, eliminating inconsistencies and ambiguity, and restoring the Code to what it was originally intended to be: a clear, consistent, fair, and easy to understand guide to what violates the law and the way that criminal cases are decided.
- Specifically, the Improved Code seeks to:
 - Adopt the values and judgments expressed in current Delaware criminal law, and to incorporate them into a modern, readable criminal code format to produce a criminal code that is comprehensive, rational, and non-duplicative.
 - Make the code simpler, more readable, and more easily accessible to law enforcement and the public so that those who must obey the code, and those who are required to enforce it, can understand the code for themselves.
 - Ensure that criminal offenses and legal rules are cohesive and relate to one another in a consistent and rational manner.

- Reduce the word count of the code to approximately $\frac{1}{4}$ of the words in the current code.
- Bring the nearly 100 felonies and over 100 misdemeanors scattered throughout the various Titles of the Delaware Code into one Criminal Code.
- Consciously group offenses of relative seriousness together for sentencing purposes, unlike the current ad hoc approach to grading offenses.

Mandatory Minimums

- Under the current code, the mandatory minimum sentencing provisions are inconsistent and unpredictable, having no clear rules about which grades of offenses or culpable states of mind merit a mandatory minimum.
- The Improved Code puts the highest priority on deterring violent crimes, sex crimes, and gun crimes and proposes a principled system that imposes minimum sentences on serious offenses of those kinds.