

Criminal Justice Improvement Committee Working Group

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March 28, 2019

The Honorable Harris B. McDowell, III
Chair, Criminal Justice Improvement Committee
Legislative Hall
410 Legislative Avenue
Dover, DE 19901

Dear Chairman McDowell:

On behalf of the Criminal Justice Improvement Committee's Working Group, I am pleased to present to you the Final Report to the Delaware General Assembly's Criminal Justice Improvement Committee. The enclosed Final Report and the two accompanying proposed bills represent the most comprehensive and necessary reform to Delaware's criminal justice system since enactment of the Delaware Criminal Code of 1973. The pursuit of just process and institutions cannot begin—indeed, has no hope at all—without a fair, rational, and understandable criminal code. The code is the foundation for all other pressing criminal justice issues of our day, including: the protection and vindication of victims; fair process for defendants; accurate and reliable fact-finding and interpretations of law; clear instructions to jurors; fair and transparent sentencing; proportional punishment for similar criminal offenses; and reducing mass incarceration. Without a strong criminal code, all other reforms are incomplete.

These materials propose to replace the current criminal code in Title 11 with a new, improved criminal code. Over the last 46 years, the Criminal Code of 1973 has ballooned in size and complexity. Originally based upon the landmark Model Penal Code, the original code was concise yet comprehensive. But over time, many of the additions to the code have multiplied offenses that overlap with each other unnecessarily, created an incoherent constellation of mandatory minimum sentences, and pushed the grades of offenses ever upward without seriously considering the size of Delaware's prison population or the impact on public safety.

Recognizing these problems, the General Assembly in the FY 2015 Budget Act (SB 255) adopted epilogue language that created a non-partisan Criminal Justice Improvement Committee (the "CJIC"). The CJIC was tasked, among other things, with eliminating redundancies, inconsistencies, and outdated provisions in the law, and restoring proportional grading of offenses. The only way to approach these legislative mandates required review and reconsideration of every aspect of substantive criminal law in Delaware. Therefore, in 2015, the CJIC established this Working Group that began the painstaking process of drafting a new criminal code according to the epilogue's principles.

It took the Working Group a full year to develop the first working draft of the new code, along with a preliminary commentary explaining its relationship to current Delaware law. The initial draft also included a comprehensive table of offense grades and a conversion table showing the section-by-section relationship between current law and the improved code. With these tools in hand, the Working Group worked tirelessly throughout 2016, 2017, and 2018 holding public hearings and meetings throughout the state soliciting comments on the improved code from stakeholders in the criminal justice system, state agencies, and the public. In response to this input, many important changes were made to the improved code, which has been sharpened and strengthened as a result.

The final product enclosed reflects years of thoughtful work by professional code drafters, researchers, legislative counsel, judges, prosecutors, public defenders, private attorneys, victims' rights advocates, child advocates, and police officers—just to name a few. Comments have been considered from every individual, group, or agency that has chosen to respond to the Working Group's solicitations over these years. It is the fair and consistent foundation of criminal justice that Delaware deserves, and we commend these bills to you to lay that foundation for the good of all.

Respectfully,

A handwritten signature in blue ink, appearing to read "Matthew Kussmaul".

Matthew G. Kussmaul, Esq.
Consulting Attorney to the
Working Group