



The League of Women Voters of Delaware Supports
Reform of Delaware's Criminal Justice Code

The League of Women Voters of Delaware began a study of the criminal justice system in 1977, concentrating on the judicial and correctional systems, their respective structures and organization, their operations and interrelationships. Consensus on policy positions was reached in March 1979. Among the policy statements included in that 1979 position was:

Support for the adoption of consistent policies which, within budgetary constraints, will permit the disposition of offenders in the best interests of society, the victims, and the offenders and their families.

The League has supported the Criminal Justice Improvement Committee (CJIC) established in 2014 in Epilogue language in the FY 15 Budget, and each Budget since then. The CJIC's legislative mandate reads:

The Committee shall suggest efficiencies, improvement and cost savings to the criminal justice system, including but not limited to the following areas:

1. statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
2. crimes that should or should not constitute potential jail time;
3. bail and alternatives to incarceration including new technologies.

Three of our advocates, including myself, were fortunate to be present when Professor Paul Robinson, distinguished professor of law at the University of Pennsylvania, presented the status of the work on the Proposed Code to the Joint Finance Committee last year. It is our belief that the work that has been undertaken represents a comprehensive and thoughtful effort to achieve the goal of the League's policy these many years later. More significantly, four decades after adoption of the 1973 Criminal Code, this work appears to achieve the part of the CJIC's legislative mandate that addresses the Code.

We note the 1973 Code, based on a Model Code, was less than 95 pages as originally enacted. In the interim, it has grown like Topsy – to 407 pages today, with many duplicative, inconsistent, ambiguous and contradictory provisions. We applaud the Joint Finance Committee for initiating this important project aimed at rationalizing the results of that growth.

Since few members of the public were present at the hearing last year, our prepared statement aims to summarize and comment on the process that was followed in developing the proposed code, as described by Professor Robinson. We quote and comment on that process as described in the working group report. We have not attempted, in the short time allotted, to analyze substantive aspects of the report, but only to recognize the significant efforts made to ensure the ability of reviewers to undertake that analysis.

The Proposed Criminal Code seeks to replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, it seeks:

- to include necessary provisions not contained in the current code;
- to eliminate unnecessary or inconsistent provisions of the current code;
- to revise existing language and structure to make the law easier to understand and apply;
- and to ensure that criminal offenses and legal rules are cohesive and relate to one another in a consistent and rational manner.

It is important to note that the Proposed Code aims to preserve the substantive policy judgments reflected in the original criminal code adopted by the General Assembly in 1973, including amendments made since.

As stated in the report, the drafters were guided by five general principles:

First, they attempted to use clear, accessible language and organization. This is intended to enable citizens to understand what conduct is prohibited while ensuring that no offender escapes liability because of an incomplete or ambiguous offense definition. More straightforward code language also promotes development of clearer jury instructions, making it easier for jurors to fulfill their critical role. Plain language is essential even for those who work with the criminal code every day and must be intimately familiar with its rules.

Second, the Proposed Code endeavors to provide a comprehensive statement of rules, including all necessary rules that determine guilt. Comprehensiveness helps avoid inappropriate results, for example, ensuring that courts that decide individual cases and act independently of one another, are much less likely to apply the law differently in similar cases.

Third, the drafters aimed to consolidate offenses. Perhaps inevitably, four decades of piecemeal modification of the Criminal Code of 1973 have led to the addition of hundreds of new offenses, many of which create confusion, overlap or contradict, and cause mistakes that ensue when one fails to notice, or find, provisions that may apply to a given case. Consolidation also aids the task of proper grading, because it is nearly impossible to maintain consistent, proportional grading when offense definitions are based on immaterial or incomprehensible, distinctions.

Fourth, the drafters attempted to grade offenses rationally and proportionally by developing a way to grade each offense proportionally to its gravity, considering how all offenses relate to one another, and recognizing all, and only, suitable distinctions among the relative severity of offenses.

Finally, the Proposed Code aims to follow the substance of current law to the maximum extent possible. In some places, however, current law contains multiple contradictory rules on a single subject. Other rules may have been sound when enacted, but no longer reflect current realities or sensibilities and require expansion, alteration, or deletion. In those situations, where the existing legal rule seems clearly at odds with the Epilogue mandate of producing a rational, coherent criminal code, the drafters did modify the existing rule. But they have identified those instances and have provided supporting commentary to describe and justify the proposed change.

In recognition that such value judgments are best left to the legislature, the Proposed Code includes footnotes identifying several substantive policy issues for the General Assembly to resolve. Each footnote presents the arguments on both sides of the issue.

To facilitate the debate on Delaware's criminal law and to assist the public and various actors within its criminal justice system, the drafters have added several tools.

- Volume 1 of the Preliminary Report contains a Summary Grading Table that groups all offenses covered by the Proposed Code according to their grade, and assists in the evaluation of the Proposed Code's grading judgments.
- Because the Proposed Code attempts to be comprehensive, it contains a large number of offenses, creating a challenge in assuring proportionality among all offenses. The Summary Grading Table facilitates this difficult but essential task.
- In addition, Volume 1 contains two Conversion Tables. The first one lists each Proposed Code provision and identifies the current law provision(s) that it replaces; the second Conversion Table lists each current law provision and identifies the Proposed Code provision(s) that address its content. These tables ease the comparison between current law and the Proposed Code. We believe these conversion tables will be especially helpful in training of police and others involved in enforcing the code to translate understanding of the current code to content of the proposed code.
- Volume 2 of the Preliminary Report contains the official commentary, which describes how each section of the Proposed Code works. Where the Proposed Code suggests a change in current law, the commentary notes this fact and identifies the suggested change and the reasoning behind it.

We believe that the work of the CJIC is an incredible achievement in dealing with an extremely complex collection of policies over the past forty years. We also believe it is incumbent on the General Assembly to carefully and thoughtfully consider enactment of the proposed code, as it may be amended to reflect any specific concerns or issues that may arise during its thorough review.

We must point out the following additional work that is needed to fulfill the entire legislative mandate:

- Bail reform, as noted above is a major unfinished component of the CJIC work. We understand this is an extremely complex subject and we look forward to the workshop where we expect to learn more about its status.
- There is no mention of the cost savings part of the legislative mandate in the current report. If the report could identify ways that the Proposed Code might reduce costs of enforcement, prosecution, defense, prison time, or other costs of the criminal justice system, we believe that might encourage the Administration and the General Assembly to take the work more seriously.
- The report suggests that the proposed offense grades are intended only to convey the relative seriousness of offenses, and not the sentencing consequences of a conviction for any offense. Rather, the drafters expect that in the near future the CJIC and the General Assembly *may* examine important issues, including whether to eliminate or limit mandatory minimum sentences...and other important options relevant to sentencing. Hopefully, the grading tables contained in the report should facilitate a full consideration of those vital issues.”

In conclusion, we wish to make it clear that one of the top priorities in the League’s policy positions is opposition to mandatory sentencing in favor of judicial discretion. With regard to this issue, our policy calls for:

- Employment of independent professional evaluators to assess the costs, benefits and long-range effects of current sentencing practices;
- Use of such evaluation results as guidelines for executive and legislative branches of state government in developing legislation and by the judiciary in exercising sentencing responsibilities.
- Use in the courts of a range of sentencing alternatives where such alternatives do not create a danger to society or jeopardize rehabilitation of the offender. Alternatives should include but not be limited to restitution, work service, work referral, and other programs of a constructive nature.

It is our fervent hope that this work on rationalizing the Code will lead to the next step, that of addressing the vital issues of sentencing policies, as called for in our policies.