

*Panel details work on bringing clarity to Criminal Code Chicago Daily Law Bulletin  
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**BODY:**

When state Sen. John J. Millner was Elmhurst's chief of police, he saw firsthand the power of the legislature as he helped grieving relatives of a murdered couple pass Illinois' first anti-stalking law in the early 1990s.

The law made a big difference, Millner said, dramatically reducing the number of stalking complaints police received.

"Offenders we used to pick up said, 'This is the way I court my girls,' " Millner recalled. "But now we say, 'If you court them that way, you're going to jail. Because it's a felony now.' "

Millner, R-Carol Stream, told that story Friday at DePaul University College of Law as part of a panel discussion on the Criminal Law Edit, Alignment and Reform Commission, which is working to streamline the state's criminal laws. Millner and fellow commissioner Sen. John J. Cullerton said that while certain changes such as the anti-stalking law were needed, other additions to the Criminal Code since it went into effect more than 45 years ago have been superfluous at best.

Constituents, Cullerton said, often want a legislative reaction to a high-profile crime, but many new laws simply criminalize conduct that is already illegal or increase penalties.

"We have been doing this, really, without any rhyme or reason," said Cullerton, D-Chicago.

The CLEAR Commission's proposal would change that. It would cut the 300,000-word Criminal Code by about a third and would resolve issues such as one created by mandatory presumptions, which require jurors to draw certain conclusions based on the facts in evidence. The Illinois Supreme Court has found such presumptions

unconstitutional, so the proposal eliminates them from about 30 laws.

The commission's proposed Criminal Code is pending as Senate Bill 100, and Cullerton said he hopes action will be taken on it before the end of May.

Also pending is a bill that CLEAR commissioners conceived to prevent the problems with the Criminal Code from recurring. Senate Bill 150 would create a criminal law review commission that would make a recommendation to the legislature as to whether a proposed bill should be considered, altered or abandoned. The review commission would consider such factors as whether a proposal is constitutional or duplicative.

Joining Cullerton and Millner on the panel were a fellow CLEAR commissioner, Cook County Circuit Judge Michael P. Toomin, and CLEAR co-director Peter G. **Baroni**. John F. Decker, a professor at DePaul and adviser to the commission, moderated the discussion.

The commissioners recounted that decisions were made by consensus and some issues they felt strongly about went by the wayside. The commission is currently considering an update of the state's sentencing laws that has been somewhat more contentious, panel members said.

Cullerton mentioned his concern that residential burglary has been elevated to a Class 1 non-probationable felony. Cullerton wanted to change that. He cited the example of a woman who went to her ex-husband's home to retrieve some belongings and was charged with -- and convicted of -- residential burglary.

"I tried to change that [law] through the CLEAR Commission, but couldn't even get the state's attorneys to go along with that," he said. "We didn't get everything we want."

But the panel said the proposed code needed to have consensus to be politically viable, and they touted its benefits in simplifying the law.

Millner, for example, said that when he started his career as a police officer in 1972, the Criminal Code was 73 pages long. Now, it is about 1,200.

"Years ago, most of us knew every single page of that Criminal Code," Millner said. "Today, we have officers that don't know a lot of the law that's in the Criminal Code, just don't know."

Toomin, who has heard about 400 murder trials in his judicial career, said the proposal clears up issues related to second-degree murder.

Essentially, under the current law, to find a defendant guilty of second-degree murder, jurors are required to determine that a defendant has committed first-degree murder with a mitigating factor present, such as serious provocation. He said jurors were confused by the statute's requirement that they decide the issues related to first-degree murder before considering whether the defendant is guilty of second-degree murder.

"The jury ... would sometimes be hung because they could not get past conceptually finding in their own minds that the state had proved first-degree so as to go on and

consider second-degree," Toomin said. "There were situations where justice simply was not done."

The commission's proposal would eliminate the confusing jury instruction. The proposal also would allow those charged with attempted murder to receive a lighter sentence if they can prove they were provoked, eliminating an inconsistency in the law where the punishment for attempted murder can actually be greater than the punishment for second-degree murder.

More information on the proposal is available on the commission's Web site at [www.clearinitiative.org](http://www.clearinitiative.org).

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