

State trying to take goofy out of the law

*Chicago Tribune
March 2, 2007 Friday*

Copyright 2007 Chicago Tribune Company
Chicago Tribune

Chicago Final Edition

SECTION: NEWS ; ZONE C; Pg. 1

LENGTH: 938 words

HEADLINE: State trying to take goofy out of the law

BYLINE: By Michael Higgins, Tribune staff reporter.

BODY:

Illinois' book of criminal laws has grown from 72 pages when it was drafted in 1961 to more than 1,200 unruly pages today.

The result, many lawyers and scholars say, is a disorganized tome that mixes essential laws with others that are redundant, unconstitutional or even nonsensical.

The state's law against money laundering, for example, doesn't wash if the laundered money was obtained in another state. There's a law against threatening public officials, but it doesn't cover assistant attorneys general. And the crime of carrying a weapon near a courthouse doesn't cover federal courts. One old law forbids lawyers from "wickedly" stirring up disputes, though that term is never defined.

Perhaps strangest of all, a person who, while acting in the heat of the moment, tries to kill someone but fails, faces a tougher sentence than if he or she had succeeded.

"It's so goofy," said Peter Baroni, an attorney and lobbyist who has worked for the state Senate Judiciary Committee. "There's a statutory incentive to finish the job--to kill somebody. It's bizarre."

Now, a team of Illinois legal heavyweights is attempting to push through the first comprehensive rewrite of the Illinois Criminal Code.

Baroni is a co-director of the effort, known as the Criminal Law Edit, Alignment and Reform, or CLEAR, initiative. Its members include Atty. Gen. Lisa Madigan, Cook County State's Atty. Richard Devine and former Gov. James Thompson, who as a young lawyer helped draft the original criminal code in 1961.

The CLEAR commission's rewrite is now a bill pending before the Senate Judiciary Criminal Law Committee. CLEAR members, who hope to pass the bill this spring, want to fix the code's various technical glitches while cutting its size by about one-third.

Much of the current code's illogic stems from laws passed to address a specific crime

or constituent complaint, without examining how the new law fits within the overall state code, said Gino DiVito, a former appellate judge who co-chairs the commission with Thompson.

"There's a lot of reaction to the crime of the week--not surprisingly," DiVito said. "That's what makes the code so confusing. You get all these add-ons."

Meanwhile, many outdated provisions or phrases survive. One current law prohibits the manufacture of gunpowder "within 20 rods" of a valuable building.

"I had to look it up," said John Decker, law professor at DePaul University and special adviser to CLEAR. He learned that a rod is 16 1/2 feet. "Most people would have no idea."

Other issues are more serious. State lawmakers have never responded to an Illinois Supreme Court ruling in 1995 that struck down the state's law on attempted second-degree murder.

The ruling left the state with a strange inconsistency in its penalties for homicides and attempted homicides committed in the heat of passion, said Kathryn Saltmarsh, legislative liaison for the state appellate defender and CLEAR's other co-director.

Currently, the unsuccessful assailant can face a mandatory term of 6 to 30 years, while the successful killer faces 4 to 20 years with the possibility of probation.

The legal oddity may have helped Colleen Hall of Bunker Hill, Ill., Saltmarsh said. Hall shot and killed her husband in 2005 in what she said was an attempt to stop him from drowning their 2-year-old grandson.

Hall pleaded guilty to second-degree murder and was sentenced to 4 years in prison. "If she had shot and missed, she would have been subject to the higher minimum penalty," Saltmarsh said.

The CLEAR rewrite also fixes the code's "mandatory presumptions," which improperly instruct the jury that if they find that a certain fact exists, they must presume that another fact exists.

More than a dozen of the state's criminal laws contain this same defect--even though the state Supreme Court has made clear for years that the provision is unconstitutional.

Last year, the court reversed a child endangerment conviction because the law tells jurors that anyone who leaves a child under 7 unattended in a car for more than 10 minutes should be presumed guilty of the offense.

As part of its reform effort, the CLEAR commission hopes to establish an advisory body that would help lawmakers respond to new court decisions and review new criminal laws.

CLEAR supporters praise the commission for forging a consensus among a membership that included natural antagonists such as prosecutors and defense attorneys, as well as judges and lawmakers.

But dodging the political landmines wasn't easy. The commission decided, for example, to retain state laws that criminalize adultery and fornication rather than risk opposition from social conservatives.

An earlier rewrite ordered by former Gov. George Ryan, which would have reduced the code to about one-eighth its current size, was deemed too radical and scrapped entirely in 2003.

Cutting the code by one-third is little more than a start, according to Paul Robinson, a University of Pennsylvania law professor who headed the earlier rewrite effort.

"What I think is disappointing is that they're going to take this Band-Aid approach, when the patient really needs to be taken to surgery," Robinson said. "I think I can predict that in five years, you will hear the same complaining" about an unwieldy code.

The CLEAR rewrite touches on hot-button legal issues from murder to child sexual abuse to flag desecration. But commission members stress that their goal was not to push the state's criminal laws to the political left or right, but only to winnow out the code's inefficiency and illogic.

"It's a monstrosity," Saltmarsh said. "It had just become an organizational morass."

mjhiggins@tribune.com

GRAPHIC: GRAPHIC: Some laws considered expendable
Along with changing provisions of the legal code pertaining to more serious offenses, the Criminal Law Edit, Alignment and Reform commission has proposed eliminating some lesser-known statutes that have become outdated.

LAW

Aircraft Crash Parts Act

WHAT IT PROHIBITS

Anyone other than investigators from carrying away parts from an airplane crash.

WHY IT SHOULD GO

Act is preempted by federal law.

LAW

Derogatory Statements About Banks Act

WHAT IT PROHIBITS

Making false or derogatory statements about the financial condition of a bank in order to affect the bank's solvency or financial standing.

WHY IT SHOULD GO

Rendered unnecessary by the Illinois Savings and Loan Act.

LAW

Horse Racing False Entries Act

WHAT IT PROHIBITS

Entering a horse into a race under a false name or out of its class.

WHY IT SHOULD GO

Redundant to the Illinois Horse Racing Act.

LAW

Clean Public Elevator Act

WHAT IT PROHIBITS

Smoking in elevators.

WHY IT SHOULD GO

Redundant to the Illinois Clean Air Act.

LAW

Telephone Coin

WHAT IT PROHIBITS

Box Tampering Act

WHY IT SHOULD GO

Stealing from pay phone coin boxes. Covered by other theft laws.

Source: Criminal Law Edit, Alignment and Reform commission

Chicago Tribune

GRAPHIC

LOAD-DATE: March 2, 2007